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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~393~~. 70

HENRY M. MYERS, APPELLANT,

vs.

THE GROOM SHOVEL COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED AUGUST 6, 1888.

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INDEX.

	Original.	Print.
Caption	1	1
Docket entries	1	1
Bill of complaint	5	2
Subpœna	11	6
Marshal's return	12	7
Answer	13	7
Replication	18	10
Evidence for complainant	19	10
Testimony of Henry M. Myers	19	10
Charles H. Myers	22	12
Thomas H. Lane	24	14
Joseph Woodwell	26	15
Joseph Lautner	26	15
Stipulation as to facts	28	16
Testimony of Henry M. Myers	29	16
Samuel Y. Calvin	30	17
Charles H. Myers	31	17
Exhibit—Statement	32	20
Testimony of Thomas H. Lane	35	20
Joseph Lautner	35	21
Henry M. Myers	36	21
James E. Emerson	41	24

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 17, 1890.

	Original.	Print.
Testimony of Charles H. Myers	46	26
Howell Gano	49	29
Leopold Pappenheimer	50	30
Jacob W. Gano	51	30
Charles C. Pyle	54	32
Charles H. Conover	57	33
J. D. Dezendorf	59	34
Isaac W. Morton	63	37
James M. Denning	64	38
John Cantwell	66	39
William S. Rathbone	69	41
Fred. G. Dieterich	73	43
Exhibit Dieterich No. 1—Drawing	75	44
2—Drawing	78	45
Testimony of George J. Kaime	82	47
Edward K. Holton	83	47
Stipulation allowing defendants to examine witnesses as to anticipation of complainant's patent with same effect as if names, &c., were set out in answer	89	51
Stipulation allowing complainant's solicitor to take complainant's testimony for the purpose of having it printed	90	51
Stipulation as to closing testimony and time for hearing	91	52
Stipulation allowing defendants to prove by publications, &c., with like effect as if set out in answer	91	52
Evidence for defendant	94	53
Testimony of Oakes A. Ames	95	53
John Carr	99	56
Patrick F. Derby	100	57
Stipulation as to taking depositions	103	58
Testimony of Henry M. Myers	104	59
Emmanuel P. Hiltebrand	105	60
Rudolph M. Hunter	107	61
Linford Rowland	133	77
Stipulation as to evidence	134	78
Stipulation as to special examiner	135	78
Stipulation as to time to take testimony	136	78
Exhibits	137	79
Copy of license	137	79
Assignment No. 1—Assignment, H. M. Myers to Ella D. Myers, July 22, 1878	140	80
No. 2—Assignment, Ella D. Myers to H. M. Myers, March 25, 1881	142	81
No. 3—Assignment, H. M. Myers to Ella D. Myers, March 30, 1881	144	82
Hunter's drawing of spade, Fig. 288, Morton's Cyclopedia of Agriculture	146	83
Hunter's drawing of spade, 295, of do.	147	83
Morton's Encyclopedia (extracts)	148	83
Hubbard's patent, No. 220,760, October 21, 1879	150	84
Hunter's side view of spades shown in Defendant's Exhibit Foster's Allgemeine Bauzeitung	156	86
Foster's Allgemeine Bauzeitung (extracts)	157	87
Allgemeine Bauzeitung, 1853, Blatt 560, Fig. 11, Fig. 12	158	87

	Original.	Print.
Barnes' patent, No. 186,520, January 23, 1877	159	88
Cunningham patent, No. 160,170, February 23, 1875	165	90
Smith patent, No. 113,805, April 18, 1871	170	93
French Encyclopedia	175	95
Foster's Allgemeine Bauzeitung, No. 2	178	96
Myer's file wrapper and contents	181	97
Opinion of the court	192	103
Final decree	194	103
Appeal	195	104
Bond	196	104
Citation	198	105
Clerk's certificate	199	106

1 Among the rolls, records, and judicial proceedings had in the circuit court of the United States for the western district of Pennsylvania, wherein Henry M. Myers is complainant and The Groom Shovel Company *et al.* are defendants, at No. 3, November term, 1884, in equity, may be found the following words and figures, to wit:

Equity Docket Entries.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer of said Company.

J. J. Johnston, George Shiras, Jr.
George Harding, F. T. Chambers.

Bill filed June 10, 1884. Same day subpœna issued, returnable first Monday of July next.

1884, July 28.—Subpœna returned; N. E. I., mar., $1.00. 1884, July 22, *alias* subpœna issued, returnable first Monday of August next. 1884, July 23, subpœna (*alias*) served upon the Groom Shovel Company by delivering to Edward K. Holton, secretary, a true and attested copy thereof and informing him of the contents; mar., $2.50. 1884, August 29, defendant, by J. C. Birge, pres't, appears. 1884, October 13, answer filed. 1884, November 22, complainant's replication filed. 1885, February 17, order granted extending time for taking complainant's testimony till the 23d day of
2 March, 1885, and appointing A. C. Johnston, examiner herein on part of complainant. 1885, April 3, order filed extending time for taking complainant's testimony till May 1, 1885. 1885, May 5, order granted extending time for taking complainant's testimony for period of thirty days from this date. 1886, January 18, stipulation of counsel filed that defendants may use certain publications with same effect as though they were set out in answer. 1886, June 8, depositions on part of complainant taken before A. C. Johnston, examiner, at Pittsburgh, Pa., filed; also depositions taken before L. L. Walbridge, U. S. com'r, at St. Louis, filed; also depositions taken before P. A. Hoyne, U. S. com'r, at Chicago, filed; also depositions taken before B. R. Cowan, clerk U. S. circuit court, at Cincinnati, filed; also depositions of Chas. C. Pyle, taken before Noble C. Butler, clerk U. S. circuit court, at Indianapolis, filed; also deposition taken before W. S. Harsha, clerk U. S. circuit court, at Detroit, filed. Same day, Exhibits Patent Emerson Hand Book, copy of license, assignment No. 1; also assignment Henry M. Myers to Ella D. Myers and Ella D. Myers to Henry M. Myers filed. 1887, May 23, depositions of O. A. Ames *et al.*, on part of defendant, before George W. Kennedy, notary public, at North Easton, Mass., filed. Same day stipulation of complainant's counsel that def'ts'

counsel may take above deposition and file same with same effect as if filed by the examiner filed; also stipulation of counsel
3 that complainant have until June 1 to complete their testimony in rebuttal, and that cause may be heard at any time between June 7 and July 1 filed.

1887, May 26.—Testimony and exhibits taken and offered before Samuel Bell, Esq., sp. examiner, at Phila., filed. 1887, June 2, testimony of F. G. Dieterich on part of complainant, before S. A. Terry, notary public, at Washington, D. C., filed. 1887, June 6, on motion of compl't's counsel, order granted extending time for taking and filing pl'ff's rebutting testimony for 30 days from June 7, '87, filed. 1887, July, 5, depositions for complainant, taken before L. L. Walbridge, at St. Louis, Mo., filed. 1887, Dec. 15, cause argued; C. A. V. 1887, December 20, opinion of the court directing a decree to be drawn dismissing the bill filed.

1887, Jan. 18.—Decree entered decreeing that Henry M. Myers is not the first and original inventor of patent sued on; that bill be dismissed, and that def't- recover of complainant their costs, to be taxed, filed.

1888, Jan'y 18.—Defendants' bill of costs filed.

Same day.—Defendants' bill of costs, including examiners' fees for taking testimony for def'ts, taxed at $173.50.

1888, March 2.—Petition of complainant praying for an appeal from the decree of this court to the Supreme Court of the United States presented and appeal allowed. 1888, March 12, bond on appeal, with Charles H. Myers as surety, presented to the court and bond approved and filed.

1888, April 12.—Citation, directed to the Groom Shovel
4 Company, issued, signed by Hon. M. W. Acheson, J., returnable in the U. S. Supreme Court on the 2d Monday of October next. 1888, May 8, service of citation acknowledged by Francis T. Chambers, Esq., solicitor for defendants.

5 *Bill.*

Circuit Court of the United States in and for the Western District of Pennsylvania.

No. 3 of November Term, 1884.

HENRY M. MYERS
versus
GROOM SHOVEL COMPANY—JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary; GEORGE J. KAIME, Treasurer. } In Equity.

To the honorable the judges of the circuit court of the United States in and for the western district of Pennsylvania:

Henry M. Myers, of Beaver Falls, in the county of Beaver, he State of Pennsylvania, and citizen of said State, brings this bill against the Groom Shovel Company—Julius C. Birge, president; Ed-

ward K. Holton, secretary, and George J. Kaime, treasurer of said company—of St. Louis, in the county of St. Louis and State of Missouri, and citizens of said State.

And thereupon your orator complains and says that on or about the twenty-fourth day of September, in the year one thousand eight hundred and seventy-eight, Henry M. Myers was the true, original, and first inventor of a certain new and useful improvement in handle sockets for shovels, spades, and scoops not known or
6 used before and not in public use or on sale for more than two years prior to the date of his application for a patent, with his consent or allowance.

And your orator further shows unto your honors that the said Henry M. Myers, so being the inventor of said improvement and being a citizen of the United States aforesaid, made application to the proper department of the Government of the United States for letters patent in accordance with the then existing laws of Congress; and, having duly complied in all respects with the conditions and requisitions of said laws, on the twenty-fourth day of September, in the year one thousand eight hundred and seventy-eight, letters patent of the United States No. 208,258, signed, sealed, and executed in due form of law, for invention or discovery, were issued to Ella D. Myers, whereby there was secured to her and her heirs, executors, and assigns, for the term of seventeen years from the 24th day of September, in the year one thousand eight hundred and seventy-eight, the full and exclusive right of making, using, and vending to others to be used the said improvement.

And your orator further shows that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed, accompanied by certain drawings referred to in said last-mentioned schedule and forming part of said letters patent. The said letters patent and the said specification thereto annexed (which or an exemplified copy of which your orator will produce as your honors may direct) were duly recorded in the Patent Office.

And your orator further shows unto your honors that the said Henry M. Myers, by an instrument in writing dated the 24th day of March, 1881, assigned the said letters patent and invention to Ella D. Myers, which assignment was duly recorded in the United States Patent Office, as by said assignment or a duly authenticated copy thereof, ready in court to be produced, will fully and at large appear.

And your orator further shows unto your honors that the said
7 Ella D. Myers, by an instrument in writing dated the 20th day of April, 1884, assigned the said letters patent and invention to Henry M. Myers, your orator, which assignment was duly recorded in the United States Patent Office, as by said assignment or a duly authenticated copy thereof, ready in court to be produced, will fully and at large appear.

And your orator shows that he has extensively applied the said several improvements to practical use and has been, and but for the infringement hereinafter complained of your orator would still be,

in the undisturbed possession, use, and enjoyment of the exclusive privileges secured by the said letters patent and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that the said defendants herein named, well knowing all the facts hereinbefore set forth, are now constructing and using shovels, spades, and scoops in some parts thereof substantially the same in construction and operation as in the said letters patent mentioned, the exclusive right and privilege to make and use which and vend the same to others to be used is thus by law vested in your orator.

And so it is, may it please your honors, that the said defendants, as your orator is informed and believes, without the license of your orator, against his will, and in violation of his rights, have made and used and intend to continue still to make and use the said improvements within the district of —, and refuse to pay to your orator any of the profits which they have made by such unlawful manufacture and use or to desist from the further infringement of said recited letters patent, all which acts and doings are in violation of the exclusive rights and privileges so as aforesaid vested in your orator under and by virtue of said recited letters patent No. 208,258, and are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises.

To the end, therefore, that the defendants may, if they can, show reason why your orator should not have the relief hereby
8 prayed, and that they may make a full disclosure and discovery of all the matters aforesaid, and upon their corporal oath and according to the best and utmost of their knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer—that is to say:

I. Whether the said original letters patent No. 208,258, hereinbefore mentioned, were granted and issued to Ella D. Myers as aforesaid.

II. Whether the said original letters patent No. 208,258 were assigned as aforesaid.

III. Whether the said defendants or either and which of them had at any time, and when and during what period of time, made, used, or sold any and how many shovels, spades, scoops, constructed in whole or in part upon the principles and in the manner described in said letters patent No. 208,258, granted as aforesaid. Describe minutely and in detail their construction and operation.

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over the income or profits thus unlawfully derived or which might have been derived from the violation of the rights of your orator as aforesaid. Your orator prays that your honors, upon entering of the decree in favor of your orator against said defendants for infringement as above prayed for, may also proceed to assess or cause to be assessed under

your directions as well the profits or income to be derived therefrom, to be accounted for as aforesaid, as also, in addition thereto, the damages sustained by your orator by reason of such infringements, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement committed by said defendants as hereinbefore set forth; and, further, that the said defendants may be restrained from any
9 further violation of the rights of your orator as aforesaid, your orator prays that your honors may grant a writ of injunction, issuing from and under the seal of this honorable court or issued by one of your honors, perpetually enjoining and restraining the said defendants, their clerks, attorneys, servants, agents, and workmen, from any further construction or sale or use in any manner of said patented improvements or any part thereof in violation of the rights of your orator as aforesaid, and that the shovels, spades, and scoops now in possession or use of the said defendants may be destroyed or delivered up to your orator for that purpose; and your orator further prays that a provisional or preliminary injunction be issued, restraining the said defendants from any further infringement of said recited letters patent pending this cause, and they pray for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America directed to the said Groom Shovel Company and Julius C. Birge, Edward K. Holton, secretary, and George J. Kaime, treasurer thereof, commanding them, on a day certain therein to be named, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and may be required by the principles of equity and good conscience.

JAMES J. JOHNSTON,
Solicitor for Complainant, Henry M. Myers.

NOTE.—The defendants are required to answer each of the foregoing interrogatories, numbered I to III, inclusive.

JAMES J. JOHNSTON,
Solicitor for Complainant.

10 UNITED STATES OF AMERICA, }
Western District of Pennsylvania. }

Before me, the subscriber, duly authorized to administer oaths, personally came Henry M. Myers, the complainant in the foregoing bill named, who, being duly sworn, deposes and says that so far as the statements herein contained are within his own knowledge they are true, and so far as they are derived from the information of others (he) verily believes them to be true.

And he further says that he verily believes the said Henry M. Myers in said bill named is the original, true, and first inventor of the new and useful improvement in handle sockets for shovels,

spades, and scoops which is described in the letters patent granted and issued to Ella D. Myers and mentioned in the foregoing bill.

And, further, that the said deponent verily believes that the title of the said complainant is as set forth in said bill.

HENRY M. MYERS.

Affirmed to and subscribed before me this tenth day of June, A. D. 1884.

A. C. JOHNSTON,
Notary Public.

11 *Alias Chancery Subpœna.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania.

The United States of America to the Groom Shovel Company and Julius C. Birge, president; Edward K. Holton, secretary, and George J. Kaime, treasurer of said company, Greeting:

We command you and every one of you that you appear before our judges of our circuit court of the United States of America for the western district of Pennsylvania, at the city of Pittsburgh, in said district, on the first Monday of August next, to answer the bill of complaint of Henry M. Myers for infringement of letters patent, filed in the clerk's office of said court, in the city of Pittsburgh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default; and this you are in nowise to omit, under such penalties as are inflicted by the laws of the United States.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Pittsburgh aforesaid, this 22d day of July, in the year of our [SEAL.] Lord one thousand eight hundred and eighty-four, and of our Independence the 109th.

H. D. GAMBLE, *Clerk.*

MEMORANDUM.—The above-named defendants are required to enter an appearance in the above-entitled cause on or before the first Monday of the month ensuing twenty days after the service of
12 this writ, otherwise the complaint may be taken against them as confessed and a decree entered accordingly.

H. D. GAMBLE, *Clerk.*

I hereby authorize and depute E. J. Smail to serve within writ.

JAS. S. RUTON,
U. S. Marshal.

July 23, 1884.—Served the within writ on the Groom Shovel Company by delivering to Edward K. Holton, secretary, a true and attested copy hereof and informing him of the contents.

E. J. SMAIL.

Sworn to and subscribed before me this 5th day of August, A. D. 1884.

H. D. GAMBLE, *Clerk.*

July 23, 1884.—Served the within writ as set forth in above affidavit.

JAS. S. RUTON,
U. S. Marshal.

13 *Answer.*

United States Circuit Court, Western District of Pennsylvania.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary; GEORGE J. KAIME, Treasurer Thereof.

In Equity. No. 3. Nov. Term, 1884.

Filed October 13, 1884.

The answer of the Groom Shovel Company and Julius C. Birge, president; Edward K. Holton, secretary; George J. Kaime, treasurer thereof, the above-named defendants, to the bill of complaint of the above-named complainant.

These respondents, now and at all times hereafter saving and reserving to themselves any and all manner of benefit or advantage of exceptions or otherwise that may be had or taken to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer to said bill or to such parts thereof as they are advised it is material or necessary for them to make answer unto, answering, say:

I. They are informed and believe and thereupon admit that letters patent of the United States, numbered 208,258 and entitled improvement in handle sockets for shovels, spades, and scoops, were granted and issued to Henry M. Myers, assignor to Ella D. Myers, for an alleged new and useful shovel handle, under date of September 24th, 1878, but they deny that said Myers was the true,
14 original, and first inventor of said alleged invention. They deny that said alleged invention was new and useful. They deny that the same was not known or used before the alleged invention thereof by said Myers, and they deny that the said alleged invention was not in public use or on sale, with the consent and allowance of said Myers, for more than two years before his application for a patent therefor, and they further deny that any exclusive rights became vested in said Myers or his assignee by virtue of said letters patent.

II. Save by said bill, they are not informed and cannot say as to the alleged assignments set out in said bill, and they therefore deny the same and deny that this complainant has any such interest in letters patent No. 208,258 as entitles him to bring this suit, and they

leave this complainant to make such proof in this behalf as he may be advised.

III. Upon information and belief they deny that this complainant has extensively applied said alleged invention to practical use. They deny that he has made any profit therefrom, and they deny that there is or has been any general public acquiescence in the validity of such letters patent.

IV. And these defendants, further answering, deny that they are now making, using, or vending the said patented improvement or a handle in some parts thereof substantially the same in construction and operation as in the said patent mentioned and the exclusive right and privilege to make, use, and vend which is by law vested in these complainants.

And these defendants, further answering, deny that they have made, used, or sold or that they intend still to continue to make, use, and sell the said alleged improvement within the western district of Pennsylvania, in violation of said letters patent or in violation of any rights secured to these complainants in the premises.

And these defendants, further answering, and not waiving any, but still insisting upon all and singular the matters herein-
15 before set forth, further say, by way of defence to said bill of complaint, upon information and belief, as follows, to wit:

V. That the said Henry M. Myers in said bill mentioned was not the original and first inventor or discoverer of the subject-matter specified or claimed in letters patent No. 208,258, nor of any material and substantial part of the thing patented in or by said patent, but that the thing patented in or by said letters patent No. 208,258 was, or material or substantial parts thereof were, prior to the alleged invention or discovery thereof by said Henry M. Myers, (*a*) known to and used by the following-named persons at the following places, respectively, to wit:

Oakes A. Ames, of and at North Easton, Massachusetts; Oliver Ames, of and at North Easton, Massachusetts; Dolphin G. Smith, of and at Columbus, Ohio; William Rowland, Jonathan Rowland, Samuel Rowland, Lynford Rowland, Howland Rowland, Rush Rowland, William D. Rowland, John Pfeifer, and George Griffiths, all of and at Philadelphia, Pennsylvania; R. J. Pettibone, of and at Wyoming, Pennsylvania; Charles T. Robinson, of and at Taunton, Massachusetts; Charles W. Hubbard, Thomas Bakewell, David M. Long, Elmore A. Barnes, and Ephriam Smith, all of and at Pittsburgh, Pennsylvania; John J. Dietrick, Patrick W. Groom, and Edward K. Holton, all of and at St. Louis, Missouri; B Cunningham, of and at Freehold, Luzerne county, Pennsylvania; Thomas Weiss, of and at Bethlehem, Pennsylvania; also to others whose names and residences and the places of whose prior knowledge are at present unknown to defendants, but which they crave leave to add hereafter by way of amendment as they may be advised, (*b*) patented or described and shown in the following letters patent, to wit: Letters patent of the United States to Dolphin G. Smith, No. 113,805, of April 18th, 1871; to Elmore A. Barnes, No. 186,520, of January

23, 1877; to Peter B. Cunningham, No. 160,170, of February 23, 1875.

16 Wherefore said letters patent No. 208,258 were and are null and void.

VI. That the thing patented in or by said letters patent No. 208,258 had been in public use or on sale in this country for more than two years before the application of said Myers for a patent therefor.

VII. That in view of the state of the art at and before the time of the alleged invention of Myers, and of which due proof will be made, said letters patent No. 208,258 does not describe or claim anything that is lawfully the subject-matter of a patent under the laws of the United States.

And these defendants are advised and believe, and thereupon submit to the court, that by reason of the foregoing facts, severally, said letters patent No. 208,258 are null and void.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct.

And these defendants submit to this honorable court that this complainant has no right to any further answer to his bill of complaint or any part thereof, and no right to any injunction or account or other relief prayed for in said bill; and these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

GEO. HARDING,
FRANCIS T. CHAMBERS,
Solicitors and of Counsel for Defendants.

CITY OF ST. LOUIS, }
State of Missouri, } *ss:*

Julius C. Birge and E. K. Holton, being duly sworn, depose and say that they have read the above answer, and that so far as
17 the facts stated therein are within their knowledge they are true, and so far as they are stated on information and belief they believe them to be true.

E. K. HOLTON.
JULIUS C. BIRGE.

Subscribed and sworn to before me this eleventh day of October, A. D. 1884.

EUGENE KARST,
Notary Public.

[SEAL.]

18 *Replication.*

Circuit Court of the United States, Western District of Penna.

HENRY M. MYERS
v.
GROOM SHOVEL CO. *et al.* } No. 3. Nov. Term, 1884. Equity.

The replication of the complainant, Henry M. Myers, to the answer of the defendant-, The Groom Shovel Company—J. C. Birge, pres't; E. K. Holton, sec'y, and Geo. G. Kaime, treasurer.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant- is uncertain, insufficient, and untrue; without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed and denied is true; all of which matters and things this repliant is ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GEORGE SHIRAS, JR.,
Solicitor for Complainant.

Filed Nov. 22, 1884.

19 *Testimony.*

United States Circuit Court, Western District of Pennsylvania.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer of said Company. } No. 3. Nov. Term, 1884.

PITTSBURGH, PA., *May* 14, '85.

Met as per notice.
Present: Henry M. Myers and counsel, C. C. Dickey.

Adjourned to meet at noon of Friday, May 15, 1885.

Met pursuant to adjournment.
Present: James J. Johnston, counsel for plaintiff.

HENRY M. MYERS, witness, called and sworn.

Henry M. Myers.

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is Henry M. Myers. I am nearly fifty-four

years old. I reside in Beaver Falls, Pa., and I am engaged in the manufacture of shovels.

Int. 2. Look at Exhibit Myers and state if you ever saw a shovel constructed on that plan; and, if so, when, where, and all you know about —.

20 A. Owing to the increased demand for a shovel with increased strength in the handle strap of a shovel at the juncture of the blade and strap, I conceived the idea of forming a socket by increasing the width of the back and front strap, which, when bent around the handle as shown in Exhibit Myers, would increase the strength of the strap and shovel very materially, and at the same time add very much to the appearance of the shovel. I therefore made some of the improved socket straps, as shown in Exhibit Myers, and introduced them to the trade, which was favorably received and admitted by many to meet a want of the trade. I made application for a patent for said improvement, which was granted to me, but the patent was issued to my wife, Ella D. Myers, and she subsequently assigned the patent to me. I never saw a shovel constructed on that plan prior to its manufacture by myself.

Int. 3. State what is the peculiarity of the shovel Exhibit Myers, and what advantage, if any, is due to that peculiarity?

A. The peculiar advantage is the forming of the socket at the juncture of the blade for the purpose of greatly increasing the strength of the strap, with the wooden handle; and its novel feature consists in a socket combined with the ordinary handle straps, which make it resemble in some respects the ordinary shovel, imparting to it a better finish and thereby making it more salable, in addition to its strength.

Int. 4. Look at the paper I now show you and state if you know anything about it.

Adjourned to meet at Beaver Falls, Pa., on Saturday, May 16, 1885, at 11 a. m.

Met pursuant to adjournment.

Present: James J. Johnston, counsel for Henry M. Myers.

Examination of HENRY M. MYERS continued:

A. Yes; about the month of September, 1879, under advice
21 from me, my wife gave the Groom Shovel Company, of Saint Louis, a license, in accordance with their wishes and desire, for a shop right to manufacture the socket strap under the letters patent issued to her, and this paper is a copy of that license.

(Paper placed in evidence and marked "Exhibit Copy of License.")

Int. 5. Look at the paper I now show you and state if you know anything about it.

A. It is a copy of the letters patent granted to me and issued to my wife, Ella D. Myers, for an improvement in handle sockets for shovels, spades, and scoops.

(Patent placed in evidence and marked "Exhibit Patent.")

(Complainant places in evidence the assignment of Henry M. Myers to Ella D. Myers, and is marked "Exhibit Assignment No. 1.")

(Complainant also places in evidence the assignment of Ella D. Myers to Henry M. Myers, and marked "Exhibit Assignment No. 2.")

(Complainant also places in evidence an assignment from Henry M. Myers to Ella D. Myers, and marked "Exhibit Assignment No. 3.")

(Complainant also places in evidence an assignment from Ella D. Myers to Henry M. Myers, and is marked "Exhibit Assignment No. 4.")

Int. 6. What difference, if any, is there in the price of the shovels manufactured under letters patent No. 208,258, and marked Exhibit Patent, over the ordinary shovel to the trade?

A. At first, on introducing the socket strap to the trade, and manufactured under Exhibit Patent No. 208,258, we sold them at an advance of from five to ten per cent. over the ordinary shovel, and had no trouble in obtaining such advance of price until after the Groom Shovel Company commenced infringing on my patent by making the socket strap and offering it to the trade at the same price as the old style or ordinary strap; consequently we were compelled
22 to meet the reduction in many places or lose the trade. About two or three years after I commenced to manufacture the shovels under Exhibit Patent the Western Shovel Maker's Association, consisting of Hussey, Burns & Co., of Pittsburgh, Pa.;, Hubbard, Bakewell & Co., of Pittsburgh, Pa.; the Groom Shovel Co., of Saint Louis, and H. M. Myers & Co. (Limited), of Beaver Falls, Pa., was formed, after which they passed a resolution which required H. M. Myers & Co. to sell the socket strap made under Exhibit Patent at an advance of five per cent. over the old style strap. The reason of them passing such a resolution was, as they alleged, that H. M. Myers & Co. had an undue advantage over the other firms in the association by reason of their improvement in the shovel manufactured under Exhibit Patent. This resolution continued in force for one or two years.

H. M. MYERS.

Charles H. Myers.

CHARLES H. MYERS, a witness on the part of complainant, sworn:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is Charles H. Myers. I am twenty-nine years old. I reside in Beaver Falls, Pa. I am the superintendent and salesman of the shovel works of H. M. Myers & Co., of Beaver Falls, Pa.

Int. 2. How long have you acted in either of these capacities?

A. Very nearly ten years.

Int. 3. Look at Exhibit Myers and state when and where, if ever, you saw a shovel of that construction.

A. I saw it first made by H. M. Myers & Co., in the latter part of the year 1877.

Int. 4. Did you ever sell any of those shovels?

A. Yes, sir.

23 Int. 5. When first, and to whom?

A. I cannot state the exact date, nor give the names of the parties to whom I first sold shovels made under Exhibit Patent, but I know of such shovels being sold as early as June 14th, 1878, to R. D. Cone, Winona, Minnesota; Drake & Drayton, of Burlington, Iowa, and Wm. Blair, of Chicago, Ill. This latter firm purchased as many as 250 dozen at a single order, and other larger orders from the same firm.

Int. 6. In your efforts at selling to the trade, what was your experience in that respect—I mean the selling the shovels made under Exhibit Patent?

A. When I first took the shovel on the road I carried a sample, and it was admitted by all that I showed it to that it was new, and that they never saw anything like it before; and they also admitted that it made a stronger shovel and added very much to the finish of the shovel, and in every case where I sold I got from five to ten per cent. better prices than for the old-style strap that they had in stock.

Int. 7. You have stated that your sold the shovels made under Exhibit Patent at an advance of five to ten per cent. Is that still the case?

A. In some cases it is, and in others it is not.

Int. 8. Why can you sell it in some cases at five to ten per cent. advance over the old shovel and other cases you cannot?

A. The Groom Shovel Company, of St. Louis, had offered the goods at five per cent. under the price that we were selling at and I lost the sale. I recall one case; Hibband, Spencer & Bartlett, of Chicago, Ill., refused to give me their order unless I furnished the goods at the same price offered by the Groom Shovel Company. At that time I refused to do it—that is, I refused to sell at the reduced price offered by the Groom Shovel Company. Afterwards, in talking with my father about this matter of reducing and losing of the sale, I sold them scoops made under the Exhibit Patent at the reduced price, for the reason that they were old customers

24 and we desired to retain this trade, and in order to still maintain our trade with them and others we are still compelled to sell shovels, scoops, and spades made under Exhibit Patent at the reduced price.

Int. 9. Do you know of your own knowledge that the shovels, scoops, and spades manufactured by the Groom Shovel Company are substantially the same as the shovels, scoops, and spades made under Exhibit Patent—I mean those shovels, scoops, and spades that you refer to in your previous answer—and that they (were) sold to Hibband, Spencer and Bartlett, whereby you lost your trade for a time?

A. Yes; they were substantially the same as described in the patent marked "Exhibit Patent."

Int. 10. When did it first come to your knowledge that the Groom Shovel Company were selling shovels, scoops, and spades substantially the same as described in Exhibit Patent?

A. In May, 1884, at Schreiber, Conchor & Co.'s, of Dubuque, Iowa, I met Mr. Holton of the Groom Shovel Co. in said store when he was showing his samples to Mr. Schreiber, the buyer. Mr. Schreiber made the remark to me that it looked very much like your socket strap. I answered in the affirmative.

C. H. MYERS.

Thomas H. Lane.

THOMAS H. LANE, a witness on the part of Henry M. Myers, sworn:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is Thomas H. Lane. I am fifty-four years old. I reside at Pittsburgh, Pa. I am in the hardware business in Pittsburgh.

Int. 2. How long have you been in the hardware business?

25 A. Over forty years, in Pittsburgh, Pa.

Int. 3. Are you acquainted with Henry M. Meyers, of Beaver Falls, Pa.? If yea, state how long you have known him.

A. I have been acquainted with him for over twenty-five years. I first knew him when he was engaged with Newmeyer & Graff, who were engaged in the shovel business.

Int. 4. Have you had any dealings with Henry M. Myers? If yes, state in what.

A. I have. I dealt with him when he was in partnership with Myers and Arnot, since 1868. I bought shovels from them. I have been dealing with him continuously.

Int. 5. Look at the shovel I now show you and state if you ever bought shovels like it; and, if so, from whom.

A. We have bought shovels like it from H. M. Myers & Co., of Beaver Falls Pa.

(Shovel placed in evidence and marked "Exhibit Myers.")

Int. 6. Did you ever purchase shovels like Exhibit Myers prior to purchasing from H. M. Myers & Co.?

A. We never did purchase any with that kind of strap.

Int. 7. When you first purchased shovels like Exhibit Myers from H. M. Myers & Co., did you consider it a new construction of shovels in the trade?

A. Yes, sir; and we considered it a desirable article and was an improvement on the former mode of applying straps to shovels, believing that it added strength at the point where the greatest strength was needed. The shovel was generally received in favor by the public. In all my experience with shovels I never saw any of that form, and it was considered a new idea by both dealers and consumers, and it was a desirable article, and it has the preference over other shovels.

THOMAS H. LANE.

26 *Joseph Woodwell.*

JOSEPH WOODWELL, a witness on part of plaintiff, sworn:

Interrogatory 1. What is your name, age, residence and occupation?

Answer. My name is Joseph Woodwell. I am seventy-eight years old. I reside in Pittsburgh, Pa. I am not now engaged in business—since the first of January last. I was formerly in the hardware business.

Int. 2. How long had you been in the hardware business?

A. Since 1845.

Int. 3. Look at the shovel I now show you, marked Exhibit Myers, and state when you first saw a shovel of that construction.

A. About seven years ago.

Int. 4. What was your impression when you first saw a shovel like Exhibit Myers?

A. My impression was that it was a new thing to the trade at that time.

JOSEPH WOODWELL.

Joseph Lautner.

JOSEPH LAUTNER, a witness on the part of plaintiff, sworn:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is Joseph Lautner. I am 49 years old. I reside in Allegheny, Pa. I am in the hardware business.

Int. 2. How long have you been in the hardware business?

A. Twenty-six years.

Int. 3. Look at the shovel I now show — and marked Exhibit Myers and state if you ever saw a shovel like it; and, if so, when and where.

27 A. I saw them about 6 years ago, at my store in Allegheny, Pa. I deal largely in shovels.

Int. 4. You have stated that about six years ago, like Exhibit Myers, in your store in Allegheny, Pa. Can you state from whom you purchased them?

A. From H. M. Myers and Co., of Beaver Falls, Pa.

Int. 5. When you first saw the shovel like Exhibit Myers what was your impression?

A. My impression was that it was a new thing to the trade.

Int. 6. Was it a desirable thing or otherwise?

A. It was desirable.

Int. (7.) Has it any advantage over shovels formerly in the trade; and, if yea, in what respect?

A. It has as to strength and finish and sells better than the old-fashion strap.

JOSEPH LAUTNER.

28 In the Circuit Court of the United States for the Western District of Pennsylvania.

H. M. MYERS
vs.
THE GROOM SHOVEL COMPANY *et al.* } In Equity.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, through their counsel, that the respondents never claimed any right under the license referred to in the answer to question 4 in the deposition of Henry M. Myers, taken on the 16th day of May, 1885, a copy of which was put in evidence, marked Exhibit Copy of License, nor did said defendants ever pay to the complainants any royalty. Wherefore said license became void and ended.

Nov. 5th, 1885.

H. M. MYERS,
GEORGE SHIRAS, JR.,
JAMES J. JOHNSTON,
Complainant's Counsel.

FRANCIS T. CHAMBERS,
Respondents' Counsel.

29 BEAVER FALLS, PA., *Oct. 8th*, 1885.

Met pursuant to notice hereto annexed.

Present: Henry M. Myers, complainant, and J. J. Johnston, his counsel. Defendants not present in person or by counsel.

Henry M. Myers.

HENRY M. MYERS, complainant, sworn:

Interrogatory 1. Have you any means by which you can state the number of shovels made from January 1st, 1878, to July 1st, 1884, under letters patent No. 208,258, and marked Exhibit Patent?

Answer. Yes, sir; I have.

Int. 2. Please state the number of shovels, scoops, and spades made under said patent up to July 1st, 1884.

A. The number is 55,155 dozen, or 661,860, shovels, spades, and scoops made under said patent. I make this statement from a memorandum which I had my book-keeper carefully prepare from the books.

Int. 3. Can you state how many shovels, scoops, and spades you have made and sold from January 1st, 1878, up to October 1st, 1885, constructed under said patent No. 208,258?

A. We have made and sold 77,773 dozen, or 933,276, shovels, scoops, and spades made under said patent. We have also orders on our books October 1st, 1885, for six thousand dozen shovels, scoops, and spades to be made under said patent not yet shipped, making in all 72,000 shovels, scoops, and spades now on our order book and to be shipped, making a total in all of one million five thousand two

hundred and seventy-six shovels, scoops, and spades constructed under said patent No. 208,258. These statements I make from the memorandum I have before mentioned.

(The memorandum is placed in evidence and marked "Exhibit Statement, A. C. Johnston, commissioner.")

30 Int. 4. From your personal examination of your books and your oversight of your business, do you believe the statement in Exhibit Statement to be correct and true?

A. Yes; I do.

Int. 5. Are other manufacturers of shovels in any manner endeavoring to secure the trade of your customers by offering to furnish them with shovels, scoops, and spades substantially the same as described in said patent 208,258?

A. Yes; we have received letters from different parties who are our customers stating that they have been offered the socket-strap shovel by the Groom Shovel Company and others; and also our agents report that many of our customers informed them verbally that they could buy the socket-strap shovel from the Groom Shovel Company for less money than prices offered by us; consequently we were compelled to meet their prices or lose the orders.

H. M. MYERS.

Samuel Y. Calvin.

SAMUEL Y. CALVIN, a witness on the part of complainant, sworn:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is Samuel Y. Calvin. I am 42 years old. I reside in Beaver Falls, Pa., and am book-keeper for H. M. Myers & Co.

Int. 2. How long have you been book-keeper for H. M. Myers & Co.?

A. Over nine years.

Int. 3. Look at Exhibit Statement and state if you made it out and from what you made it.

A. Yes, sir; I made it out from the books of H. M. Myers & Co.

Int. 4. It is correct in all particulars?

A. Yes, sir.

SAMUEL Y. CALVIN.

31 *Charles H. Myers.*

CHARLES H. MYERS sworn on behalf of the complainant:

Interrogatory 1. Do you frequently examine the books of H. M. Myers & Co.?

Answer. Yes, sir.

Int. 2. Examine Exhibit Statement and state, if you can, whether the facts set forth in said exhibit are correct or not.

A. I went through this statement with Samuel Y. Calvin, the

book-keeper, at the time it was made out, and knew it to be correct according to the books.

Int. 3. You are frequently "out on the road" selling shovels for H. M. Myers & Co., are you not?

A. Yes, sir.

Int. 4. Do you find that the trade of H. M. Myers & Co. interfered with by other manufacturers of shovels in respect to that class of shovels manufactured under letters patent 208,258?

A. Yes, sir; by other manufacturers; among whom is the Groom Shovel Co., and I am aware of H. M. Myers & Co. receiving letters from their customers that other manufacturers are offering shovels such as are described in letters patent No. 208,258 at very low prices, much lower than we have been accustomed to sell that grade of goods; but, notwithstanding this state of facts, the trade of H. M. Myers & Co. in that class of shovels described in said letters patent is constantly increasing, and if not interfered with in the manner I have stated the increase would have been much greater, and to meet the increasing demand of said shovels H. M. Myers & Co. have been compelled from time to time to increase the capacity of their works.

CHAS. H. MYERS.

32 EXHIBIT STATEMENT.

Patent Socket-Strap Shovels Sold in 1878.

Hubbard, Bakewell & Co.	496	doz. p'rs, 25 c. per doz. royalty.
Maxwell Rowland	10	" " " " "
Scoops sold	407	" 5 to 10 per cent. higher than common straps.
	913	

Sold in 1879.

Hubbard, Bakewell & Co.	305	doz. p'rs, 25 c. per doz. royalty.
Hussey, Burns & Co.	5	" " " "
Groom Shovel Co.	10	" " " "
Shovels sold	956	" 5 to 10 per cent. higher than common strap.
Spades	8	dozen, 5 to 10 per cent. higher than common strap.
Scoops	648	dozen, 5 to 10 per cent. higher than common strap.
	1,932	

Sold in 1880.

Hubbard, Bakewell & Co.	80	doz. p'rs, 25 c. per doz. royalty.
Shovels sold	8,474	dozen, 5 to 10 per cent. higher than common strap.
Spades	914	dozen, 5 to 10 per cent. higher than common strap.
Scoops	2,363	dozen, 5 to 10 per cent. higher than common strap.
	11,831	

Sold in 1881.

Hussey, Burns & Co.	45	doz. p'rs socket strap.
Groom Shovel Co.	637	" " "
Shovels, spades, and scoops	11,888	doz. with " "
	12,570	

33

Sold in 1883.

Groom Shovel Co.	586	doz. p'rs socket strap.
Shovels, spades, and scoops	8,764	" with "
	9,350	

Sold in 1884.

Groom Shovel Co.	000	
George Griffith	71	doz. p'rs socket strap.
Shovels, scoops, and spades	13,029	" with "
	13,100	

Sold to Oct. 1st, 1885.

George Griffiths	235	doz. p'rs socket strap.
Shovels, scoops, and spades	16,491	" with "
	16,726	

A large portion of these sold at an advance of 25 cts. per dozen net over the common strap.

Number of dozens sold from Oct. 1st, 1880, to Oct. 1st, 1885: To Michigan Wire Shovel Co., 1,405 dozen,

Total number dozens socket straps sold from Jan. 1st, 1878, to Oct. 1st, 1885, 77,773 doz., or 933,276, socket-strap shovels, spades, and scoops.

Total number of dozens socket-strap shovels, spades, and scoops sold from Jan'y 1st, 1878, to July 1st, 1884, 55,155 dozens, or 661,860, shovels, spades, and scoops with socket straps.

We have also orders on our books, Oct. 1st, 1885, for 6,000 dozen socket-strap shovels, scoops, and spades not yet shipped, or 72,000 shovels, spades, and scoops with socket straps on.

Or a total amount of shovels, spades, and scoops sold since Jan'y 1st, 1878, to Oct. 1st, 1885, making 1,005,276.

34 HENRY M. MYERS
vs.
THE GROOM SHOVEL CO. and JOHN C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer of said Company. } No. 3. Nov. Term, 1884.

PITTSBURGH, PA., *Nov. 6th*, 1885.

Parties met by agreement of counsel.

Present: James J. Johnston; counsel for H. M. Myers, and Francis T. Chambers, counsel for defendants.

Counsel for respondents, by agreement, notes the following objections to the questions and testimony heretofore taken in the case in behalf of complainant, it being agreed that the objections shall have the same force and effect as if noted at the time the questions were put:

In answer to question four in deposition of Henry M. Myers, of May 16th, 1885, and the proffer and marking of the paper entitled "copy of license" objected to, first, as incompetent under the pleadings, and, second, as not being the best evidence, no ground being shown for the non-production of the original paper.

The question and answer six of the same deposition objected to as irrelevant and immaterial to the issue in the case.

All of the questions and answers in the deposition of H. M. Myers taken October 8th, 1885, objected to as irrelevant and immaterial.

The deposition of Charles H. Myers taken May 16th, 1885, questions and answers 3 to 8, inclusive, objected to as irrelevant and immaterial.

35 Questions and answers 9 and 10 objected to as incompetent for the reason that the witness has not been shown to possess any such knowledge and qualifications as would entitle him to testify as he does.

Thomas H. Lane.

THOMAS H. LANE called for cross-examination *de bene esse:*

Cross-interrogatory 1. You stated in answer to question 7 that shovels like the "Exhibit Myers Shovel" have the preference over other shovels. Do you mean by this statement that shovels of this kind are preferred to any other shovel in the market?

Answer. I mean that, everything else being equal, the preference will be given to the socket strap.

X Int. 2. It is a fact, is it not, that there as shovels in the market without what you call the socket strap which are regularly sold at a higher price than the Myers shovel?

A. Yes, sir.

THOMAS H. LANE.

Joseph Lautner.

JOSEPH LAUTNER called for cross-examination.

Cross-examined by FRANCIS T. CHAMBERS, counsel for respondents, *de bene esse:*

Cross-interrogatory 1. You state in your direct testimony that shovels like "Exhibit Myers Shovel" sell better than the old-fashioned strap. Now, is it not the fact that there are shovels in the market with what you call the old-fashioned strap which sell uniformly for higher prices than the Myers shovel or other shovels with similar straps?

Answer. I suppose there is, but not to my knowledge. I am only speaking of my own experience.

36 X Int. 2. Do you know anything about the "O. Ames" brand of shovels?

A. I do.

X Int. 3. They have the old-fashioned straps, do they not?

A. Yes, sir.

X Int. 4. They sell for a higher price than the Myers shovels, do they not?

A. Not the ones we sell.

X Int. 5. Do you mean that you can buy the "Ames" shovel cheaper than you can get the Myers shovel? I mean the "O. Ames" brand.

A. It being a matter of business, I refuse to answer that.

JOSEPH LAUTNER.

Henry M. Myers.

HENRY M. MYERS called for cross-examination *de bene esse:*

Cross-interrogatory 1. You claim to be the inventor of a shovel having a socket near the blade of the shovel terminating in straps, so that the handle is enclosed in the socket at its lower end, and has straps of the ordinary kind running up its upper and lower sides above the handle?

Answer. Yes, sir.

X Int. 2. The manufacture of shovels made in accordance with your patents was carried on by Henry M. Myers & Co., Limited, and not by yourself, I believe?

A. Yes, sir.

X Int. 3. This concern has never owned the patent, has it?

A. No, sir.

X Int. 4. What is your connection with the company?

A. I am a partner in the company and chairman of the concern.

X Int. 5. This concern has paid you or your wife, when she was the owner of the patent, a license fee or royalty?

A. Yes; for a short time.

37 X Int. 6. How long has it been since they paid you anything?

A. Some considerable time; I suppose six years, as near as I can recollect.

X Int. 7. Has anybody else ever paid to you or to Mrs. Myers any royalty under this patent?

A. Yes, sir.

X Int. 8. Who?

A. The Groom Shovel Company made payments of royalty on socket straps, as near as I can remember.

X Int. 9. Are you perfectly sure of this?

A. No, sir; I am not perfectly sure of this.

X Int. 10. Has anybody else ever paid you a royalty?

A. Properly speaking, not directly; but indirectly, by way of selling other makers the socket strap to be riveted onto the blade of the shovel or scoop.

X Int. 11. The straps you speak of were sold by H. M. Myers & Co., Limited, were they not?

A. Yes, sir; when I say I sold straps I mean H. M. Myers & Co., Limited.

X Int. 12. You state in your direct examination that the Western Shovel Makers' Association passed a resolution requiring H. M. Myers & Co. to sell the socket strap at an advance of five per cent., and that this resolution continued in force for one or two years. This is so, is it?

A. Yes, sir; to the best of my knowledge, that it correct.

X Int. 13. This resolution was agreed to and was satisfactory to your concern and yourself?

A. Yes, sir; we accepted it.

X Int. 14. Is it not the fact that this requirement of the association was given up and abandoned at your own request?

A. Not to my knowledge.

X Int. 15. I mean at the request and desire of H. M. Myers & Co.

A. No, sir; I don't remember of any request being made in

38 any case; but this I do remember, that when the Western Shovel Makers' Association met with the Eastern makers, at Philadelphia, and a new association formed of Eastern and Western makers, they did not then make any demand that the socket strap made by H. M. Myers & Co. should be sold at any higher price than ordinary straps.

X Int. 16. Is it not true that at this Philadelphia meeting you refused to sign the agreement unless your concern was allowed to sell the socket-strap shovels at the same price as plain straps?

A. No, sir; it is not true. I may have intimated that we would not be bound to sell five per cent. higher before we came to that question, and if my memory serves me right the question of the socket strap was not raised at that time.

X Int. 17. This was before the Groom Company had made any socket straps, was it not?

A. Yes, sir.

X Int. 18. Was anybody else making them then, as far as you know?

A. I cannot say certain whether or not; it may be that Hubbard, Bakewell & Co. were making what were called the "hub socket strap."

X Int. 19. Was that made in accordance with your patent?

A. I claim that it is an infringement on my patent.

X Int. 20. Do you make any shovels without socket straps in your concern at Beaver Falls?

A. Not any now. We make what we call the full socket and half socket.

X Int. 21. Both made in accordance with your patent?

A. No, sir; the full socket is, but the half socket is partly in accordance with the patent. What we call half socket or what some call taper socket.

Adjourned to meet at 2 p. m.

39 Met pursuant to adjournment.

X Int. 22. Do you mean that the half socket is or is not covered by your patent?

A. I mean that the half socket or taper socket is covered by my patent.

X Int. 23. Can you produce a shovel having what you call the half or taper socket?

A. Yes, sir. Here is one.

(Witness produces a shovel, marked for identification "Myers Taper Socket Shovel, Nov. 6th, 1885, A. C. Johnston, Ex'r.")

X Int. 24. Which of your shovels most nearly resembles the shovel made by the defendant, in your opinion?

A. Exhibit Myers most nearly resembles it.

X Int. 25. In the Exhibit Statement which you produced on October 8th, 1885, there are many entries of the follow- kind: "Hubbard, Bakewell & Co., 496 dozen pairs, 25 cents per dozen royalty." These entries do not mean that Hubbard, Bakewell & Co. or the others referred to in similar entries paid you a royalty on shovels made by them, do they?

A. No, sir; it does not mean that they paid a royalty on shovels, but it means that they paid 25 cents per dozen pairs on straps furnished by us, H. M. Myers & Co. I should except Hussey, Binns & Co., who did not pay a royalty on straps furnished, and which they agreed to pay.

X Int. 26. As a matter of fact, you sold the straps for a fixed price per dozen and chose to consider the 25 cents was royalty?

A. The royalty was charged in addition to the fixed price for the straps, as I understand it by our books.

X Int. 27. Was anybody else making similar straps at the time you sold these?

A. Yes. I understood that Hubbard, Bakewell & Co. and I think

37 X Int. 6. How long has it been since they paid you anything?

A. Some considerable time; I suppose six years, as near as I can recollect.

X Int. 7. Has anybody else ever paid to you or to Mrs. Myers any royalty under this patent?

A. Yes, sir.

X Int. 8. Who?

A. The Groom Shovel Company made payments of royalty on socket straps, as near as I can remember.

X Int. 9. Are you perfectly sure of this?

A. No, sir; I am not perfectly sure of this.

X Int. 10. Has anybody else ever paid you a royalty?

A. Properly speaking, not directly; but indirectly, by way of selling other makers the socket strap to be riveted onto the blade of the shovel or scoop.

X Int. 11. The straps you speak of were sold by H. M. Myers & Co., Limited, were they not?

A. Yes, sir; when I say I sold straps I mean H. M. Myers & Co., Limited.

X Int. 12. You state in your direct examination that the Western Shovel Makers' Association passed a resolution requiring H. M. Myers & Co. to sell the socket strap at an advance of five per cent., and that this resolution continued in force for one or two years. This is so, is it?

A. Yes, sir; to the best of my knowledge, that it correct.

X Int. 13. This resolution was agreed to and was satisfactory to your concern and yourself?

A. Yes, sir; we accepted it.

X Int. 14. Is it not the fact that this requirement of the association was given up and abandoned at your own request?

A. Not to my knowledge.

X Int. 15. I mean at the request and desire of H. M. Myers & Co.

A. No, sir; I don't remember of any request being made in

38 any case; but this I do remember, that when the Western Shovel Makers' Association met with the Eastern makers, at Philadelphia, and a new association formed of Eastern and Western makers, they did not then make any demand that the socket strap made by H. M. Myers & Co. should be sold at any higher price than ordinary straps.

X Int. 16. Is it not true that at this Philadelphia meeting you refused to sign the agreement unless your concern was allowed to sell the socket-strap shovels at the same price as plain straps?

A. No, sir; it is not true. I may have intimated that we would not be bound to sell five per cent. higher before we came to that question, and if my memory serves me right the question of the socket strap was not raised at that time.

X Int. 17. This was before the Groom Company had made any socket straps, was it not?

A. Yes, sir.

X Int. 18. Was anybody else making them then, as far as you know?

A. I cannot say certain whether or not; it may be that Hubbard, Bakewell & Co. were making what were called the "hub socket strap."

X Int. 19. Was that made in accordance with your patent?

A. I claim that it is an infringement on my patent.

X Int. 20. Do you make any shovels without socket straps in your concern at Beaver Falls?

A. Not any now. We make what we call the full socket and half socket.

X Int. 21. Both made in accordance with your patent?

A. No, sir; the full socket is, but the half socket is partly in accordance with the patent. What we call half socket or what some call taper socket.

Adjourned to meet at 2 p. m.

39 Met pursuant to adjournment.

X Int. 22. Do you mean that the half socket is or is not covered by your patent?

A. I mean that the half socket or taper socket is covered by my patent.

X Int. 23. Can you produce a shovel having what you call the half or taper socket?

A. Yes, sir. Here is one.

(Witness produces a shovel, marked for identification "Myers Taper Socket Shovel, Nov. 6th, 1885, A. C. Johnston, Ex'r.")

X Int. 24. Which of your shovels most nearly resembles the shovel made by the defendant, in your opinion?

A. Exhibit Myers most nearly resembles it.

X Int. 25. In the Exhibit Statement which you produced on October 8th, 1885, there are many entries of the follow- kind: "Hubbard, Bakewell & Co., 496 dozen pairs, 25 cents per dozen royalty." These entries do not mean that Hubbard, Bakewell & Co. or the others referred to in similar entries paid you a royalty on shovels made by them, do they?

A. No, sir; it does not mean that they paid a royalty on shovels, but it means that they paid 25 cents per dozen pairs on straps furnished by us, H. M. Myers & Co. I should except Hussey, Binns & Co., who did not pay a royalty on straps furnished, and which they agreed to pay.

X Int. 26. As a matter of fact, you sold the straps for a fixed price per dozen and chose to consider the 25 cents was royalty?

A. The royalty was charged in addition to the fixed price for the straps, as I understand it by our books.

X Int. 27. Was anybody else making similar straps at the time you sold these?

A. Yes. I understood that Hubbard, Bakewell & Co. and I think

the Groom Shovel Company, also, were making what is called the "hub" strap or taper socket strap for their own use.

40 Redirect examination:

Interrogatory 28. You have testified in cross-examination that H. M. Myers, & Co., Limited, paid royalty for shovels manufactured under your patent for a short time. Why did they cease paying royalty?

Answer. Simply for this reason: that H. M. Myers & Company was in one sense nothing more than H. M. Myers, and the royalty paid to Mrs. H. M. Myers was simply paid as a little pin-money for her benefit, as the patent was then in her name; but under the limited copartnership law it was necessary that John Reeves, Henry Reeves, George Morrison should take nominally five hundred dollars stock in the business, and also Mr. Henrici should take stock, in order to make up the board required by law; but aside from that an instrument in writing was signed and agreed to that H. M. Myers should only be required to pay interest on money advanced by the other parties and to accept the principal as fast as paid and withdrawn.

H. M. MYERS.

41 United States Circuit Court, Western District of Pennsylvania.

HENRY MYERS
vs.
THE GROOM SHOVEL COMPANY and JOHN C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE KAIME, Treasurer.

No. 3. Nov. Term, 1884.

Testimony in Rebuttal on the Part of Complainant, taken at Beaver Falls May 18th, 1886.

BEAVER FALLS, *May 18th*, 1886.

Present: James T. Johnston, counsel for complainant, and Francis T. Chambers, counsel for defendants.

James E. Emerson.

JAMES E. EMERSON, a witness on the part of complainant, sworn, says:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is James E. Emerson. I am 62 years old. I reside in Beaver Falls, Pa. I am a saw manufacturer.

Int. 2. State what experience you have had in manufacturing and your knowledge of new and useful machinery and invention.

42 A. I have had about thirty years' experience as a manufacturer, directly. I have been an inventor for upwards of thirty years, have taken out about sixty patents, and have made the

subject of inventions and of patents a study, more or less, for about that length of time or a little longer, probably.

Int. 3. In your experience as a manufacturer, mechanic, and inventor have you found that slight changes and modifications have formed an important factor in the inventions or machinery that you have operated with? If yea, state fully your knowledge and experience in that respect.

A. I have, most certainly. I have discovered in manufacturing machines and instruments that a slight change in shape or configuration not only may result in an improvement in the article manufactured, but simplify the process of manufacture and the construction and keeping in repair the machinery used in manufacturing the article. For instance, in cutlery, the article for a band saw, we find that to feed that saw by hand is an exceedingly slow process. In toothing a saw from twenty to sixty feet in length will occupy considerable time. I had a machine built for the purpose of toothing a saw (that is, cutting the teeth in the saw) for the various various shapes and distances apart required for the various kinds of works. I had an attachment for operating a catch that would draw the saw to exactly the required distance for cutting each tooth, but in its operation the machine was so constructed that I could not bring the catch under the die that cut the last tooth, and was compelled to have a tooth between the last one cut and the one upon which the catch operated in feeding the saw, of lengths required for band saws, through. I found the teeth to vary enormously in the distances apart, so that in feeding the saw from thirty to fifty feet the variations were so great that the saw was worthless. I was about to abandon the process when a thought struck me of placing a spring behind the catch, so that as it traveled up to the die or punch that was to do the cutting and came against the side of it the steel spring behind
43 it yielded until the punch raised above the top of the catch, when the spring threw it forward under the punch and caught in the last tooth that was cut. This was some four years ago. That machine has been in constant use and never has failed to produce a saw that was mechanically perfect, although no saw can be toothed mechanically that will be mathematically perfect when done. In studying over the cause which produced the imperfection in my former efforts with this machine I found that no two teeth were cut that were mathematically equal distances apart, and that when so many teeth were required, often seven hundred on the same saw, that this slight imperfection, that appeared immeasurable, multiplied with each cut that the die made, and that the variations from end to end from the saw was as many times greater in the last teeth as it would be to multiply the slight fractional part of an inch that the mathematical variation of the first two teeth cut might show, and, multiplied by the entire number of teeth in the saw, I considered this a very slight change in a machine which added greatly to its value. To illustrate a change in a tool or instrument I will refer to page 53, Emerson, Smith & Co. Hand Book of 1886—a tool known as a saw swage, used for spreading the cutting points of saw teeth, the angles of circular saws more especially, necessarily vary. The

teeth used for sawing soft qualities of timber would work easily and properly if made very slim at the cutting points, but for the harder qualities of timber such points were liable to break and crumble. I conceived of constructing one of these swages so that the opening in which the cutting point was spread could be raised easily to suit the various angles required. I therefore constructed a steel jaw, N, and operated with a set-scew, 1, so that the opening could be varied to suit the angle of the teeth required. I have these steel jaws N rolled in bars of the size and shape required and cut them off in short lengths to the thickness of the swage. This, although very simple, has taken the lead in what is known as saw swages for about fourteen years. A swage with a uniform
44 opening for spreading the points of the teeth, if used on a saw tooth that is too blunt for the opening, *it* will spread the tooth too wide a little back of the cutting point, which must be filed or ground off to bring the tooth into proper shape for practical work; and if used on a saw tooth that is too slim for the opening in the swage it strikes the extreme cutting edge first and drives it back, shortening it too much before the point is spread to a width that will form the proper cutting points. This movable jaw end appears but a very slight improvement, but has proved a very valuable one. I put the hand book in as a part of my answer, and it is marked "Emerson Hand Book, for identification, A. C. Johnston, commissioner."

Int. 4. I now show you Defendants' Exhibit Ames Baltimore Shovel, and also Defendants' Exhibit Ames English Spade, and also Defendants' Exhibit Ames California Spade, and request you to compare said exhibits with Complainant's Exhibit Myers and state whether or not the defendants' exhibits just named, in your judgment, is an anticipation of the Complainant's Exhibit Myers, and give reasons for any opinion you may give in relation to the matter.

Counsel for defendants objects to the question because the witness has not been shown to be qualified to give any opinion on the subject; also as irrelevant, because the witness has been asked to compare the defendants' exhibit not with complainant's patent, but with another shovel.

A. I do not consider the Complainant's Exhibits Myers is an anticipation of either of the other three exhibits named. I consider the strap of the Ames Baltimore shovel inferior in strength to the Myers and the California spade—the straps inferior, being too weighty on the handle and weak near the spade at the point where the greatest leverage comes; that the strap of the English spade would be unsuitable for an ordinary shovel and much more costly to make them—the Myers Exhibit—and also throwing to much weight on the handle for ordinary use.

Int. 5. Please state in what respect Complainant's Exhibit
45 Myers excels the Defendants' Exhibit Ames Baltimore Shovels, Exhibit Ames California Spade, and Ames English Spade as to the matter of construction, desirability, finish, and as a salable article of manufacture.

(Objection continued.)

A. I consider that the manner of attaching the Myers shovel to the handle superior in point of utility, it supplying, as it does, additional strength at the point where most required, which is near the first rivet above the spade and at the lower part of the wood of the handle, where spades and spade handles are most liable to be broken by use, and is vastly superior to the California spade, which is very liable to be broken at the point *at the point* of junction to the upper part of the spade. Some years ago, prior to the grant of Myers' patent, we were purchasing what is known as coal scoops or shovels made by this complainant, Mr. Myers, and very similar to the Defendants' Exhibit California Spade, and they soon broke off at the point of junction of the handle to the spade. I then complained to Mr. Myers of them breaking so readily, when he showed me spades made like Complainant's Exhibit Myers. I at once fully comprehended the improvement for strength and always after purchased my scoops made after this new pattern, Exhibit Myers, and do not remember of one ever breaking of this kind. The Complainant's Exhibit Myers is in every way superior to the Defendants' Exhibit Ames English Spade, because much cheaper made, lighter in the handle, with ample strength for ordinary uses. In mechanical appearance I consider the Myers shovel superior to either of defendants' exhibits, and I think would be more salable and desirable.

Int. 6. Please look at Complainant's Exhibit Myers and examine the printed copy of Myers patent No. 208,258, of September 24th, 1878, and state whether or not, in your judgment, said exhibit is constructed in accordance with said patent.

(Objected to for the reason that the witness has not been
46 shown to possess any qualification to entitle him to give an opinion.)

A. I think that it is exactly in accordance with said patent, although the drawings of said patents show the straps as being attached with rivets, yet the specification are declared as forming part of this patant No. 208,258. The specification states as follows: "The strap C and D may be formed and plated with the blade A." which covers, in my opinion, a substantial method and decided improvement in the manufacture of this shovel, spade, and scoop.

Int. 7. I show you two exhibits—one a portion of the handle sawed off and marked "Exhibit Infringement, L. L. Walbridge, notary public, St. Louis," and another marked "Complainant's Exhibit Infringement, Samuel Bell, special examiner," and request you to compare said exhibits with Complainant's Exhibit Myers, and state whether or not the first two exhibits mentioned are or are not substantially the same in construction as that shown in Complainant's Exhibit Myers.

(Objection repeated. Further objected to as irrelevant and as incompetent in rebuttal.)

A. I consider that they are substantially the same as the Exhibit Myers, with the exception that the strap in the two first-mentioned

exhibits are not cut in exactly the same shape at the two sides of the handle and have not been manufactured with the same mechanical precision, but embody quite similar mechanical advantages relating to their strength at the points most desirable in a spade or shovel.

JAMES E. EMERSON.

Charles H. Myers.

CHARLES H. MYERS, a witness on the part of complainant, called in rebuttal and sworn:

Interrogatory 1. What is your name, age, residence, and occupation?

47 Ans. My name is Charles H. Myers. I am 29 years old. I reside in Beaver Falls, Pa. I am superintendent of the shovel works, H. Myers & Co., at Beaver Falls, Pa.

Int. 2. You have testified in this case before?

A. Yes.

Int. 3. In selling the Myers shovels you were frequently out among hardware men and dealers in shovels, were you not?

A. Yes.

Int. 4. Have you heard them express themselves in relation to the shovels made by your father, the complainant in this cause, and such as is manufactured by the Groom Shovel Company, as shown by the two exhibits, Complainant's Exhibit Infringement, Samuel Bell, special examiner, and Exhibit Infringement, L. L. Walbridge, notary public, St. Louis, and state if they do or do not allege that the shovels manufactured by the Groom Shovel Company, as shown in said exhibit, are substantially the same as Complainant's Exhibit Myers.

(Objected to as incompetent, because not in rebuttal and for calling for hearsay evidence.)

A. Yes, sir; when we first commenced to make the socket-strap shovel, and for some years afterwards, we got as a price five per cent. more than shovels made by other manufacturers, and sustained that price right along in many cases until after the Groom Shovel Company got to making this socket strap shown in these exhibits. When we came to ask for the extra five per cent. they would cite this socket strap to us by saying they could buy this at the old price of common strap, and that they could not see any reason for paying us any more money, as this strap was substantially the same and answered the same purpose as the Myers. The only thing they could do was to give us the order as a matter of preference, and that is the condition of three-fourths of our trade to-day.

C. H. MYERS.

48 I, A. C. Johnston, special commissioner in the case of Henry M. Myers *v.* The Groom Shovel Company *et al.*, hereby certify that the foregoing is a true and faithful transcript of the testimony of Henry M. Myers, Charles H. Myers, Thomas H. Lane, Joseph

Woodwell, Joseph Lautner, Samuel T. Calvin, and James E. Emerson, taken by me at the time and place mentioned; that the witnesses were sworn by me to tell the truth, the whole truth, and nothing but the truth previous to their said depositions, and that their testimony was reduced to writing by me and subscribed by them respectively *by them*.

In testimony whereof I have hereunto set my hand this 5th day of June, A. D. 1886.

A. C. JOHNSTON,
Special Examiner.

49 THE UNITED STATES, *Southern District of Ohio.*

HENRY MYERS *vs.* THE GROOM SHOVEL COMPANY *et al.* } Case No. 3. Pending in United States Circuit Court, Western District of Pennsylvania.

Depositions of sundry witnesses taken before me, B. R. Cuven, clerk U. S. circuit court within and for the southern district of the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the complainant in an action pending in the U. S. circuit court, western district of Pennsylvania, in which Henry M. Myers is plaintiff and The Groom Shovel Company *et al.*, defendants—J. J. Johnston, Esq., being present on behalf of plaintiff.

Howell Gano.

HOWELL GANO, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Howell Gano; sixty-three years old; Cincinnati, Ohio; hardware dealer.

Int. 2. How long have you been engaged in the hardware business and where?

A. Little over 40 years, in Cincinnati, Ohio.

Int. 3. Have you dealt to any extent in shovels, spades, and scoops?

A. I have.

50 Int. 4. Are you familiar with the various manufacture of shovels, spades, and scoops as sold by the hardware dealers generally?

A. I am only tolerably so now, but was formerly quite familiar prior to 1860.

Int. 5. Look at the shovel I now show you, and state if you ever saw a shovel, spade, or scoop having a handle strap and socket constructed the same as seen in this shovel, prior to the year 1860.

A. I never saw one.

(The shovel marked "Exhibit Adams" and placed in evidence.)

Int. 6. In your judgment, is there any advantage in the construction of handle, straps, and socket shown in Exhibit Adams? State fully your views.

A. I think there is an advantage, and that it strengthens the shovel and handle at the point where most strength is needed.

HOWELL GANO.

Leopold Pappenheimer.

LEOPOLD PAPPENHEIMER, of lawful age, being by me first cautioned and sworn, deposes and says as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Leopold Pappenheimer; 62 years old; residence, Cincinnati, Ohio; hardware dealer.

Int. 2. How long have you been engaged in the hardware business and where?

A. I have been engaged in the hardware business for 35 years, in Cincinnati, Ohio.

Int. 3. Look at Exhibit Adams, and state if, prior to 1878,
51 you ever saw a shovel, spade, or scoop of the construction as seen in Exhibit Adams, particuliarly the handle strap and socket.

A. I have not.

Int. 4. Are you familiar with the various construction of shovels as sold by the hardware trade?

A. I have been so up to the year 1880, and less familiar now.

Int. 5. State when and where you first saw a shovel, spade, or scoop of the construction shown in Exhibit Adams, particularly to handle straps and sockets.

A. I cannot fix the exact dates, but it has been only within the last few years. I suppose I saw the first of that kind of a shovel, spade, or scoop in my store about 1880.

Int. 6. Is the construction shown in Exhibit Adams salable or otherwise?

A. Salable.

Int. 7. Does it command a better price than shovels, spades, and scoops having the handle straps of the ordinary construction?

A. In the majority of cases the socket straps shown in Exhibit Adams will be given the preference by the buyers over and above the plain shovel, though it will command but a moderate advance of the shovels and spades constructed in the old style.

LEOPOLD PAPPENHEIMER.

Jacob W. Gano.

JACOB W. GANO, of lawful age, being by me first duly cautioned and sworn, deposes and says as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Jacob W. Gano; age, 52; residence, Clifton, Hamilton county, Ohio; hardware merchant.

52 Int. 2. How long have you been in the hardware business, and where?

A. Twenty (20) years, in Cincinnati, Ohio.

Int. 3. Have you been familiar with the various construction of shovels sold in the market within the last twenty years?

A. Yes, sir.

Int. 4. Look at the shovel I now show you, marked Exhibit Adams, and state when and where you first saw a shovel having the handle straps and socket of the construction shown in said exhibit.

A. I first saw the shovel shown in our office, No. 138 Walnut street, in Cincinnati, O., the sample sent us by H. M. Myers & Co., of Beaver Falls, Pennsylvania, about three (3) years ago.

Int. 5. Is the shovel salable or otherwise?

A. It is a very salable shovel.

Int. 6. How does it compare as to the demand in relation to the ordinary shovel of the same grade?

A. My experience is that is the most popular shovel of this grade in the market.

Int. 7. In your judgment, what is it that makes the shovel Exhibit Adams most popular shovel in the trade?

A. I think, without a doubt, the socket strap for the wooden handle. In addition to that, I consider the general appearance and construction of the shovel as being the best quality, giving it the appearance of strength and fine finish.

Int. 8. Do you consider a shovel as Exhibit Adams as advantage to the trade?

A. I do.

JACOB W. GANO.

I, Benjamin R. Cuven, a clerk of the U. S. circuit court for the district aforesaid, duly commissioned and qualified, do hereby

53 certify that the above-named Howell Gano, Leopold Pappenheimer, and Jacob W. Gano were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by myself in the presence of the witnesses respectively, and were subscribed by the said witnesses respectively in my presence; that said depositions were taken at Cincinnati, Ohio, at the clerk's office, U. S. court, June 12th, 1885, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal this 12th day of June, 1885.

B. R. CUVEN,
Clerk U. S. Circuit Court, S. D. O.

51 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY and, JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer.

Depositions of witnesses for the plaintiff, produced and examined under oath before Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, at his office, in Indianapolis, in said district, on June 13th, 1885.

Charles C. Pyle.

CHARLES C. PYLE, being introduced as a witness for plaintiff and duly sworn and examined, on his oath deposes and says:

Interrogatory 1. What is your name, residence, age, and occupation?

Answer. My name is Charles C, Pyle; residence, Indianapolis, Indiana; age, thirty-two years; occupation, salesman in hardware store of Layman, Carey & Co.

Int. 2. How long have you been engaged as salesman in hardware business, and where?

A. Have been in that business twelve years; eight years as salesman at Indianapolis; part of the time I was a traveling salesman.

55 Int. 3. Does the house you act as salesman for deal in shovels, spades, and scoops; if yea, to what extent?

A. They do; they keep a full line of that class of goods. They sell at wholesale.

Int. 4. Are you familiar with the shovels, spades, and scoops that have been common to the trade for the last twelve years?

A. Yes, sir.

Int. 5. Look at the shovel I now show you, marked Exhibit Adams, and state when and where you first saw a shovel of that construction.

A. I first saw a shovel of this make about 1879; can't state where.

Int. 6. Did you know at — time whose make of shovel it was?

A. I did not know exactly at that time, but I soon found out that it was H. M. Myers & Co., of Beaver Falls, Pennsylvania.

Int. 7. Has the house for which you are salesman dealt to any extent in that make of shovel?

A. They have.

Int. 8. Is it received favorably by the trade or otherwise?

A. It is a very popular shovel and takes precedence over the ordinary make of shovel.

Int. 9. Can you give the reason for its precedence over ordinary shovels?

A. Because the socket strap makes it stronger where other shovels are weak, and gives it a better finish and appearance.

CHARLES C. PYLE.

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the foregoing deposition of Charles C. Pyle was taken before me, at my office,
56 in Indianapolis, in said district, on the 13th day of June, 1885; that the witness was first sworn according to law to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy in the above-entitled cause wherein his deposition was taken; that his deposition was by me reduced to writing and read over to the witness and subscribed by him in my presence; that the plaintiff was present at the taking of said deposition and that the defendant was not present thereat.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 13th day of June, 1885.

NOBLE C. BUTLER, *Clerk.*

Fees, 1.80, paid by plaintiff.

57 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS *vs.* THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary; GEORGE J. KAIME, Treasurer Thereof.	No. 3.	Nov. Term, 1884.

STATE OF ILLINOIS, *County of Cook, City of Chicago,* } *ss:*

JUNE 15TH, 1885.

Charles H. Conover.

CHARLES H. CONOVER, a witness called on behalf of the complainant herein and residing more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. Charles H. Conover; age, 35 years; residence, Chicago, Illinois; occupation, hardware.

Int 2. How long have you been in the hardware business?

A. Twenty years, I think—about that.

Int. 3. Have you dealt largely in shovels?

A. I have.

Int. 4. Are you familiar with the various makes of shovels that are common to the trade?

58 A. I am.

Int. 5. In what part of the country have you been selling shovels principally?

A. In the north, northwest, and all of the country tributary to Chicago.

Int. 6. Look at the shovel now shown you and marked Exhibit Adams. State where and when you first saw a shovel similar to said exhibit, particularly in relation to the handle straps and sockets.

A. To the best of my recollection, in Chicago six or seven years ago.

Int. 7. State how the shovel is received by the trade.

A. Very favorably.

Int. 8. In what respect? How does it compare with the ordinary make of shovels?

A. More favorably.

Int. 9. Can you state what advantage it has over the ordinary make of shovels as to strength and finish or appearance?

A. I regard it as stronger and of better appearance.

Int. 10. When you first saw the shovel like Exhibit Adams did you consider it a new article in the trade?

A. I did.

CHARLES H. CONOVER.

Subscribed and sworn to by the above-named Charles H. Conover this 15th day of June, A. D. 1885, before me—

PHILIP A. HAYNE,
United States Commissioner for the Northern District of Illinois.

59 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary; GEORGE J. KAIME, Treasurer Thereof. } No. 3. Nov. Term, 1884.

NORTHERN DISTRICT OF ILLINOIS, *County of Cook, City of Chicago,* } *ss:*

JUNE 15TH, 1885.

J. D. Dezendorf.

J. D. DEZENDORF, a witness called on behalf of the complainant herein, and residing more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. J. D. Dezendorf; age, 51 years; residence, Chicago, Illinois; occupation, hardware merchant.

Int. 2. How long have you been engaged in the hardware business?

A. About thirty years; most of that time in New York and Chicago.

Int. 3. Have you dealt extensively in shovels?

A. Yes.

60 Int. 4. Are you familiar with the various makes of shovels that are common to the trade?

A. Yes, sir.

Int. 5. Look at the shovel now shown you and marked Exhibit Adams, and state if you ever saw shovels similar to that, particularly in relation to the handle straps and socket; and, if yea, where and when.

A. I have seen such entirely similar goods in our own stock which had been bought by our own firm, Keith, Denham and Dezendorf, during its existence, and by a former firm with which I was connected, Britnall, Lamb & Co., as far back as 1879. My recollection is that we had them first about that time and purchased them from H. M. Myers & Co., of Beaver Falls, Pennsylvania.

Int. 6. When you first saw a shovel like Exhibit Adams, in 1879, did you consider it was a new thing in the trade?

A. Yes, sir.

Int. 7. How is it received by the trade?

A. Favorably.

Int. 8. In what respect is it received by the trade in relation to the ordinary make of shovels?

A. Judging from our own business, I should say that orders for it are increasing every year and other manufacturers are modifying the form of their straps to some extent. As a result of this I call to mind three or four, among whom are Oliver Ames' Sons corporation and Hubbard, Bakewell and Co., and others whose shovels I have not personally seen, but I have seen shovels of the two manufacturers named.

J. D. DEZENDORF.

Subscribed and sworn to this 15th day of June, A. D. 1885, before me—

PHILIP A. HOYNE,
United States Commissioner for the Northern District of Illinois.

61 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS *vs.* THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary; GEORGE J. KAIME, Treasurer Thereof.	No. 3.	Nov. Term, 1884.

NORTHERN DISTRICT OF ILLINOIS, *County of Cook, City of Chicago,* } ss:

JUNE 15, 1885.

I hereby certify that on the fifteenth day of June, A. D. 1885, before me, Philip A. Hoyne, a commissioner of the circuit court of the United States in and for the northern district of Illinois, at the city of Chicago, in said northern district of Illinois, in pursuance of notice duly served upon counsel for the said defendants, personally appeared Charles H. Conover and J. D. Dezendorf, the said Henry M. Myers, complainant, being present in person, and J. J. Johnston, Esq., appearing as counsel for the said complainant, the said defendants not being present either in person or by counsel; and the said Charles H. Conover and J. D. Dezendorf, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by their respective depositions hereunto annexed.

And I further certify that the said depositions were then and there reduced to writing by me, and were, after they had been
62 reduced to writing, subscribed by the witnesses respectively; and I further certify that the said depositions were taken in pursuance of notice served upon defendants' counsel, and that the said witnesses reside in the city of Chicago, in the northern district of Illinois, more than one hundred miles from the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either or any of the parties, nor am I interested in the event of the said cause.

In testimony whereof I have hereunto set my hand and seal, at the city of Chicago, as aforesaid, this 15th day of June, A. D. 1885.

PHILIP A. HOYNE,
A Commissioner of the Circuit Court for the Northern District of Illinois.

63 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS *vs.* THE GROOM SHOVEL CO., JULIUS C. BERGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer Thereof.	In Equity. November Term, 1884.

Testimony for final hearing under and pursuant to the 67 rule in equity, as amended, taken before me, L. L. Walbridge, United States commissioner, at the clerk's office of the circuit court of the United States, eastern district of Missouri, St. Louis, June 16th, 1885.

Present: Henry M. Myers and J. J. Johnston, his attorney.

Isaac W. Morton.

ISAAC W. MORTON, of lawful age, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by J. J. JOHNSTON, counsel for Henry M. Myers, as follows, viz:

Interrogatory 1. State your name, age, residence, and occupation.

Answer. My name is Isaac W. Morton; I am 39 years of age. I reside in St. Louis; am vice-president and treasurer of the Simmons Hardware Co.

Int. 2. How long have you been in the hardware business?

A. About 19 years.

Int. 3. Look at the shovel I now show you and marked
64 Exhibit Adams and state when you first saw a shovel of that construction.

A. I can't state positively; probably about 6 or 7 years ago.

Int. 4. Where?

A. I first saw it exhibited by Mr. Myers or his agent. I was first shown a sample here in St. Louis.

Int. 5. Are you familiar with the various make of shovels common to the trade?

A. Yes, sir.

Int. 6. How is this shovel, of the construction like Exhibit Adams, received by the trade?

A. Very favorably.

Int. 7. How does it compare with the ordinary shovel?

—. ——.

ISAAC W. MORTON.

Subscribed and sworn to before me this 16th day of June, 1885.

L. L. WALBRIDGE,
U. S. Comm'r.

James M. Denning.

JAMES M. DENNING, of lawful age, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by J. J. JOHNSTON, counsel for Henry M. Myers, as follows, viz:

Interrogatory 1. State your name, age, residence, and occupation.

Answer. My name is James M. Denning. I am 53 years of age. I reside in St. Louis. I am a shovel-maker.

Int. 2. How long have you worked at the shovel business?

A. I have worked at it—you might say—I haven't worked at anything else—since about 1853. That is the time I went to work for Newmyer and Graff, in 1853, as near as I can remember.

65 Int. 3. Where are you working now?

A. I am working for the Groom Shovel Company of St. Louis. I believe it is called the St. Louis Shovel Company now.

Int. 4. Are you familiar with all the different kinds of shovels they make at the Groom Shovel Company's works?

A. Pretty much; I work at them; I cut them and trim them up, pretty much all—not all; there are some trimmed by hand that I don't have anything to do with.

Int. 5. Look at the shovel I now show you and state if you know whether the Groom Shovel Company manufactures such a shovel as that.

(Shovel marked Exhibit Infringement shown to the witness.)

A. I should judge they do, without looking at the stamp. I should judge they manufacture that shovel.

Int. 6. Are they making shovels like Exhibit Infringement now?

A. Yes, sir.

Int. 7. How long have they been making such shovels?

A. I can't remember the exact date, but I think it was some time last fall they started at it. I am not positive about the date.

Int. 8. To the best of your recollection, it was last fall?

A. Last fall; some time in the fall or winter when they started at it.

Int. 9. Just the same as Exhibit Infringement?

A. Yes, sir; the same finish as that.

Int. 10. Who are the officers of the Groom Shovel Company?

A. Mr. Birge was president; E. K. Holton, vice-president, and Mr. Groom, superintendent.

J. M. DENNING.

Subscribed and sworn to before me this 17th June, 1882.

L. L. WALBRIDGE,
U. S. Comm'r.

66 *John Cantwell.*

JOHN CANTWELL, of lawful age, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by J. J. JOHNSTON, counsel for Henry M. Myers, as follows, viz:

Interrogatory 1. State your name, age, residence, and occupation.

Answer. My name is John Cantwell. I am 48 years of age. I reside in St. Louis, and am a wholesale hardware merchant.

Int. 2. How long have you been in the hardware business?

A. 36 years.

Int. 3. Have you dealt largely in shovels?

A. Yes, sir; for 36 years.

Int. 4. Are you familiar with the various makes of shovels common to the trade?

A. Yes, sir.

Int. 5. Look at the shovel I show you, marked Exhibit Adams, and state if you ever saw a shovel like that before; and, if so, when and where first.

A. The socket strap is a new feature of the shovel, patented and controlled and owned, I believe, generally, by the H. M. Myers Manufacturing Company of Beaver Falls, Pennsylvania.

Int. 6. Where did you first see it?

A. Here in St. Louis, as samples sent. I have known this socket-strap shovel for about 3 or 4 years, I believe.

Int. 7. When you first saw it, was it considered a new thing in the trade?

A. Yes, sir; so much so that I believe some of them — a little royalty for it, and manufactured because of the wants created.

Int. 8. How is it received by the trade?

A. With approbation, and it has won its way, I believe, into public favor, so that people will pay more for it than for a plain strap.

67 When it first came out people were loth to pay any more for it, but since then it has introduced itself to the favorable opinion of most of the sellers of the goods.

Int. 9. Look at the shovel I now show you and state if you are familiar with that construction.

(Exhibit Infringement shown witness.)

A. Yes, sir.

Int. 10. Can you state who manufacture shovels like Exhibit Infringement?

A. Yes, sir; the label is on the handle; the label, "Groom Manufacturing Co.;" they manufacture it.

Int. 11. Have you ever purchased shovels from the Groom Manufacturing Co.?

A. Yes, sir.

Int. 12. Like Exhibit Infringement?

A. Yes, sir; the Groom Manufacturing Company make a shovel called the taper-socket strap. The firm is now called the St. Louis Shovel Co., successors to the Groom Shovel Co.

Int. 13. When did you first purchase shovels of that kind, like Exhibit Infringement, from the company you have mentioned?

A. I do not know just when they applied the patent strap to shovels, but I have an idea it was commenced in 1883, about the first of January; of that I am not certain. I am not conversant enough with the time to give a correct answer. It is not over a couple of years since they got the taper strap. They had a wide strap before that, which they applied to shovels.

Int. 14. Are you well enough satisfied to say it was before July of last year?

A. Yes; I am satisfied in my mind it was before the first of last July.

Int. 15. That you purchased from them?

A. Yes, sir; although I am not positive, but that I think that the taper-strap shovels were bought before July a year ago.

68 Int. 16. Can you state whether they are manufacturing them now or not?

A. They manufacture goods with that strap like the Exhibit Infringement is for us now.

JOHN CANTWELL.

Subscribed and sworn to before me this 17th day of June.

L. L. WALBRIDGE,
U. S. Comm'r.

I, L. L. Walbridge, a United States commissioner for the circuit court of the United States in and for the eastern district of Missouri, hereby certify that the foregoing is a true and faithful transcript of the testimony of Isaac W. Morton, John Cantwell, and James M. Denning, taken by me at the time and place mentioned in the caption to said depositions; that the witnesses were sworn by me to tell the truth, the whole truth, and nothing but the truth previous to the taking of their said depositions, and that their testimony was reduced to writing upon a type-writer and subscribed by them respectively in my presence.

In testimony whereof I have hereunto set my hand and affixed my official seal this 16th day of June, 1885.

L. L. WALBRIDGE,
U. S. Comm'r.

Comm'r's fees, $10.00, paid by compl't.

69 UNITED STATES OF AMERICA:

Case pending in western district of Pennsylvania.

EASTERN DISTRICT OF MICHIGAN, } ss:
City of Detroit, County of Wayne, }

Be it remembered that on this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-five, I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, did call and caused to be and per-

sonally appear before me, at my office, at the city of Detroit, in the said eastern district of Michigan, in the State aforesaid, William S. Rathbone to testify and the truth to say, on the part and behalf of the plaintiff, in a certain civil cause or matter of controversy now pending and undetermined in the circuit court of the United States for the western district of Pennsylvania, wherein, at Pittsburgh, Pa., Henry M. Myers is plaintiff and The Groom Shovel Company and Julius C. Birge, president; Edward K. Holton, secretary; George J. Kaime, treasurer thereof, are defendants.

William S. Rathbone.

And the said WILLIAM S. RATHBONE, being about the age of 33 years and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter aforesaid, I did carefully examine the said William Rathbone and he did thereupon depose and say as follows, viz:

Interrogatory 1. What is your name, age, residence, and occupation?

70 Answer. William S. Rathbone; age, 33; residence, Detroit, Michigan; in the hardware business.

Int. 2. How long have you been in the hardware business?

A. About twelve years, with Buhl, Sons & Co., Detroit.

Int. 3. Have you dealt largely in shovels or otherwise?

A. Yes, sir; I have.

Int. 4. Are you familiar with the various marks of shovels common to the trade?

A. I am.

Int. 5. Look at the shovel I now show you, and marked Exhibit Adams, and state if you ever saw shovels of similar construction, particularly with relation to the handle straps and sockets for the wooden handle; if yea, state when and where you saw them first.

A. Yes; I have seen that shovel or shovels like that made by H. M. Myers & Co., Beaver Falls, Pa. I saw them first at Detroit, Michigan, in Buhl, Sons & Co.'s store, about the year 1880. The first I saw was brought there by their agents. It was comparatively new then. I know of them being sold by C. B. James, their agent, for a year or two previous to 1880.

Int. 6. Are the shovels similar to the construction of Exhibit Adams received favorably or unfavorably by the trade? State fully with relation thereto.

A. They are received very favorably; in fact, they are considered by our trade to be the very best shovels in the market, and are superseding the Ames manufacture, which has been considered the very best by many. It is considered one of the best, if not the best, in the market. I have myself sold large lots both to railroads and to the general trade, and, as far as I know, they have given the utmost satisfaction. They meet with ready sale, which is steadily increasing.

WILLIAM S. RATHBONE.

71 UNITED STATES OF AMERICA, } ss:
Eastern District of Michigan, }

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides out of the district and more than one hundred miles from the place of trial.

I further certify that notification of the time and place of taking the said deposition was made out and served on the ——, to be present at the taking of the deposition and to put interrogatories if he or they might think fit.

I further certify that on the 17th day of June, in the year of our Lord one thousand eight hundred and eighty-five, I was attended by Mr. J. J. Johnston, of counsel for said plaintiff; the plaintiff, Henry M. Myers, and by the witness, who is of sound mind and lawful age; and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and, after carefully reading the same to the witness, he subscribed the same in my presence.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and official seal this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the 109th.

WALTER S. HARSHAW,
Clerk U. S. Circuit Court, Eastern District of Michigan.

Fees, $5.00, paid by plaintiff.

72 HENRY M. MYERS } In Equity.
vs.
GROOM SHOVEL CO. }

Francis T. Chambers, Esq.

SIR: Please take notice that on Thursday, April 21st, 1887, at 2 o'clock p. m. of that day, at the office of Johnston, Reinohl & Dyre, cor. of 7th and G streets, Washington city, D. C., we will proceed, before a competent commissioner, to take testimony on behalf of Henry M. Myers in the above cause.

You are invited to be present and cross-examine.

JAMES J. JOHNSTON,
Of Counsel for Complainant.

Service accepted this 14th day of April, 1887.

FRANCIS T. CHAMBERS,
Solicitor for Def'ts.

[SEAL.]

73 United States Circuit Court for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
GROOM SHOVEL CO. } In Equity.

Met pursuant to notice hereto attached.

Present: James J. Johnston, counsel for plaintiff, Henry M. Myers, and Henry M. Myers, the plaintiff, the defendants not being present either in person or by counsel.

Fred. G. Dieterich.

FRED. G. DIETERICH, a witness called on behalf of the plaintiff, being duly sworn according to law, deposes as follows in reply to interrogatories:

Question 1. What is your name, age, residence, and occupation?

Answer. Fred. G. Dieterick; age, 29 years; residence, Washington, D. C.; occupation, expert in patent drawings.

Q. 2. Are you employed by any particular firm in making patent drawings?

A. I have charge of the draughting department for Munn & Co., Washington, but am at liberty to be employed by any one.

Adjourned to 9 o'clock a. m., April 22d, 1887, at the same place.

S. A. TERRY,
Commissioner.

74 Met pursuant to adjournment.

Present: James J. Johnston, counsel for Henry M. Myers, plaintiff; Henry M. Myers, the plaintiff, and Fred. G. Dieterick, witness for plaintiff, the defendant not being present in person or by counsel.

A telegram having been received by James J. Johnston, counsel for plaintiff, from Francis T. Chambers, counsel for defendant, that he would be here by two (2) o'clock to-day, adjourned to 2 o'clock p. m., April 22d, 1887, at the same place.

S. A. TERRY,
Commissioner.

Met pursuant to adjournment.

Present: James J. Johnston, counsel for plaintiff; Henry M. Myers, the plaintiff; Fred. G. Dieterich, witness for plaintiff, and Francis T. Chambers and John C. Pennie, counsel for defendants.

Q. 3. You state in answer to interrogatory No. 1 that your occupation is expert in patent drawings. State what you mean by that.

A. An expert in patent drawings is one who is capable of taking any class of drawings in the business, and who, also, is one who is able to prepare drawings for Patent Office purposes from the most crude sketches or verbal instructions, and also to be able to readily read any drawings or engravings of patents at a glance.

71 UNITED STATES OF AMERICA, } ss:
Eastern District of Michigan, }

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides out of the district and more than one hundred miles from the place of trial.

I further certify that notification of the time and place of taking the said deposition was made out and served on the ——, to be present at the taking of the deposition and to put interrogatories if he or they might think fit.

I further certify that on the 17th day of June, in the year of our Lord one thousand eight hundred and eighty-five, I was attended by Mr. J. J. Johnston, of counsel for said plaintiff; the plaintiff, Henry M. Myers, and by the witness, who is of sound mind and lawful age; and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and, after carefully reading the same to the witness, he subscribed the same in my presence.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and official seal this seventeenth day of June, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the 109th.

WALTER S. HARSHAW,
Clerk U. S. Circuit Court, Eastern District of Michigan.

Fees, $5.00, paid by plaintiff.

72 HENRY M. MYERS } In Equity.
vs.
GROOM SHOVEL CO. }

Francis T. Chambers, Esq.

SIR: Please take notice that on Thursday, April 21st, 1887, at 2 o'clock p. m. of that day, at the office of Johnston, Reinohl & Dyre, cor. of 7th and G streets, Washington city, D. C., we will proceed, before a competent commissioner, to take testimony on behalf of Henry M. Myers in the above cause.

You are invited to be present and cross-examine.

JAMES J. JOHNSTON,
Of Counsel for Complainant.

Service accepted this 14th day of April, 1887.

FRANCIS T. CHAMBERS,
Solicitor for Def'ts.

[SEAL.]

73 United States Circuit Court for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
GROOM SHOVEL CO. } In Equity.

Met pursuant to notice hereto attached.

Present: James J. Johnston, counsel for plaintiff, Henry M. Myers, and Henry M. Myers, the plaintiff, the defendants not being present either in person or by counsel.

Fred. G. Dieterich.

FRED. G. DIETERICH, a witness called on behalf of the plaintiff, being duly sworn according to law, deposes as follows in reply to interrogatories:

Question 1. What is your name, age, residence, and occupation?

Answer. Fred. G. Dieterick; age, 29 years; residence, Washington, D. C.; occupation, expert in patent drawings.

Q. 2. Are you employed by any particular firm in making patent drawings?

A. I have charge of the draughting department for Munn & Co., Washington, but am at liberty to be employed by any one.

Adjourned to 9 o'clock a. m., April 22d, 1887, at the same place.

S. A. TERRY,
Commissioner.

74 Met pursuant to adjournment.

Present: James J. Johnston, counsel for Henry M. Myers, plaintiff; Henry M. Myers, the plaintiff, and Fred. G. Dieterick, witness for plaintiff, the defendant not being present in person or by counsel.

A telegram having been received by James J. Johnston, counsel for plaintiff, from Francis T. Chambers, counsel for defendant, that he would be here by two (2) o'clock to-day, adjourned to 2 o'clock p. m., April 22d, 1887, at the same place.

S. A. TERRY,
Commissioner.

Met pursuant to adjournment.

Present: James J. Johnston, counsel for plaintiff; Henry M. Myers, the plaintiff; Fred. G. Dieterich, witness for plaintiff, and Francis T. Chambers and John C. Pennie, counsel for defendants.

Q. 3. You state in answer to interrogatory No. 1 that your occupation is expert in patent drawings. State what you mean by that.

A. An expert in patent drawings is one who is capable of taking any class of drawings in the business, and who, also, is one who is able to prepare drawings for Patent Office purposes from the most crude sketches or verbal instructions, and also to be able to readily read any drawings or engravings of patents at a glance.

Q. 4. Please state what experience you have had in the preparation and making of drawings. State fully and in detail.

A. I have been engaged in the preparation of patent drawings without interruption for the past twelve years, during which period I have prepared personally and under my supervision between thirty and thirty-two thousand drawings, between seventeen thousand and eighteen thousand of which were reproductions of
76 drawings for the United States Patent Office, they being among those which were destroyed by the fire in 1877. (This refers ts the Patent Office fire.) I have also been employed by the United States Patent Office in the preparation of the United States exhibit for the New Orleans Exposition, and have frequently been called upon to read drawings for attorneys upon which there was doubt as to construction. I am also engaged in the preparation of engravings for illustrative purposes of patented inventions.

Q. 5. I now hand you defendants' exhibit (Morton's Cyclopedia), which are photographs of pages 681 and 682 of that cyclopedia, and I also hand you a printed copy of the drawings and specifications of letters patent 208,258, and request you to state if you find in Defendants' Exhibit Morton's Cyclopedia a representation of the socket-handle straps shown in the drawings of said patent.

A. I do not.

Q. 6. Please examine Defendants' Exhibit Hunter's Drawings of Spade, 295, and compare it with the figure 295, on page 681, of Defendants' Exhibit Morton's Cyclopedia, and state whether or not you find it correct.

A. It is not absolutely correct, in my judgment. The handle straps in the Hunter drawing embrace more of the handle than would seem to be represented in the figure 295, and the point of connection of the two handle straps appears to be too far up, making it a good deal heavier and thicker in cross-section at their point of connection, where the two handle straps come together, than appears in Exhibit No. 295.

Q. 7. Have you made a pencil sketch of Exhibit 295? And, if you have, produce it, and state whether or not it is a correct representation, enlarged, of figure 295.

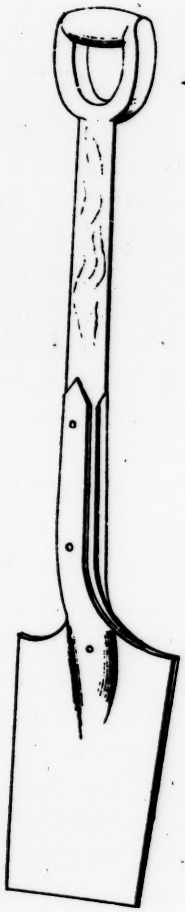
A. I have; and sketch put in and marked "Dieterich Exhibit No. 1." So far as I am able to judge, it is.

(Here follows diagram marked p. 75.)

Q. 8. Look at Defendants' Exhibit Hunter's Drawings of Spade, figure 288, and compare it with the corresponding figure in
77 Defendants' Exhibit Morton's Cyclopedia, and state whether it is a correct representation of figure 288, and give your reasons for any judgment you may give.

A. It is not a correct representation. Hunter's drawing shows two handle straps—one on front and one on rear of handle. He also shows the lower ends of the handle straps in contact, forming a socket. In Defendants' Exhibit Morton's Cyclopedia, figure 288,

"Dieterich"
Exhibit No 1.



No. 393.
Myers
v.
Groom
Shaw C.
p. 75

"Dieterich"

Exhibit No. 2.

No. 393.
Myers
v.
Groom
Shovel C.
} p. 78.

only one handle strap is shown, the lower end of which forms a complete socket, to secure the lower end of the handle.

Q. 9. Have you made a large sketch of figure 288? And, if so, produce it, and state if it correctly represents your idea of the shovel represented in figure 288.

A. It does.

(Sketch put in evidence and marked "Dieterich Exhibit No. 2.")

(Here follows diagram marked p. 78.)

Q. 10. I now hand you Defendants' Exhibit Foster's Allgemeine Bauzeitung, and I also hand you Defendants' Exhibit Hunter's Side View of Spades shown in Defendants' Exhibit Foster's Allgemeine Bauzeitung, and state if, in your judgment, it is a correct side view of said figures.

A. I think it is not. There is nothing to show in the face views which would in any way indicate that there was a handle strap on the rear side of the handle, or nothing that would indicate it in the description of said figures.

Q. 11. I now hand you a number of exhibits, commencing with Defendants' Exhibit Hubbard's Patent, Defendants' Exhibit Cunningham's Patent, Defendants' Exhibit Smith's Patent, and Defendants' Exhibit Barnes' Patent and Defendants' Exhibit French Encyclopedia. Compare them with the printed drawings and specifications of patent 208,258, granted to Henry M. Myers, and state if said exhibits represent the socket-handle straps shown in patent No. 208,258, and give your reasons for any judgment you may give regarding same.

A. They do not. In Hubbard the handle straps form but a partial socket for the reception of the handle, as the said straps
79 begin to diverge from their point of meeting at the blade, and at no point above the blade do the handle straps completely encircle the handle and form a continuous socket. Cunningham shows the handle strap and socket in one piece; therefore differs from patent No. 208,258. Smith shows but an ordinary socket having handle straps, all of which are formed in one piece; therefore differ from patent No. 208,258. Barnes shows only a continuous socket without handle straps, and therefore differs from patent No. 208,258. Defendants' Exhibit French Encyclopedia also shows the handle straps and socket formed of one piece, and therefore differs from patent 208,258.

Cross-examination by JOHN C. PENNIE, one of the counsel for defendants:

Cross-question 1. Mr. Dieterich, referring to Defendants' Exhibit Foster's Allgemeine Bauzeitung, please note that the shading upon the blade of figure 11 is different from that upon the blade of figure 12. If these two blades were curved in the same direction the shading, in order to properly show that fact, should be alike in both, should it not?

Answer. The shading as represented on this figure is, in my judgment, mere surface shading, and is not intended to bring out any particular curvature or shape of blade.

X Q. 2. If you were to make a drawing representing a spade, showing the blade in front elevation, would you not shade it substantially as shown in Exhibit No. 11, providing the blade was slightly concave upon its front face?

A. I would not.

X Q. 3. Then would you consider figure 11 a rear elevation of said spade?

A. My idea is that figure No. 11 is meant to represent a front view of that particular spade.

X Q. 4. If the spade was slightly concaved upon its front face, how would the shading differ in the rear elevation of said spade?

A. In shading a shovel blade the method of shading would
80 depend entirely upon its particular construction. Assuming figure 11, above referred to, is provided with a blade of a slightly concave shape, in shading the front elevation I would begin the shadow at the left and diminish toward the right. In making a rear elevation of the same I would begin the shading at the right and diminish toward the left.

X Q. 5. Suppose that the spade was socketed so that the rear face would show a longitudinal rib or projection in relief, in that case would you not begin the shading at the center and run it toward both the right and left?

A. I would begin in the center and shade both ways.

(Counsel for the defendants respectfully request the witness to ink in Dieterich Exhibits Nos. 1 and 2.)

Redirect examination by JAMES J. JOHNSTON, counsel for plaintiff:

Redirect question 1 Does figures 11 and 12 or either of them show the supposed construction referred to in X interrogatory No. 5?

Answer. They do not.

FRED. G. DIETERICH.

I, Seth A. Terry, a notary public, duly commissioned and qualified, do hereby certify that the above-named Fred. G. Dieterich, in pursuance of the notice hereto attached, was by me first sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by myself in the presence of the witness and was subscribed by the said witness in my presence; that said deposition was taken at Washington, D. C., in the office of Johnston, Reinohl & Dyre, April 21st and 22d, 1887, and that I was not coun-
81 sel, attorney, or relative of either party or otherwise interested in the result of this suit.

In testimony whereof I have hereunto set my hand and official seal this 22d day of April, 1887.

[SEAL.]

S. A. TERRY,
Notary Public.

82 United States Circuit Court for the Western District of Pennsylvania.

MYERS
vs.
GROOM SHOVEL CO. *et al.*

Testimony taken on the 28th day of June, 1887, on the part of the complainant in the above-entitled cause under the 67th rule, in equity, as amended, at the office of the clerk of the circuit court of the United States for the eastern district of Missouri, in the Custom-House building, in the city of St. Louis, State of Missouri, before L. L. Walbridge, commissioner of the circuit court of the United States for the eastern district of Missouri.

Present: James J. Johnston, Esq., for the complainant; H. M. Pollard, Esq., for the defendants.

Counsel for the defendants objects to the taking of any testimony by the complainant in this cause because the same is contrary to the stipulations made and on file in this case and because no proper notice has been given to the defendants.

George J. Kaime.

GEORGE J. KAIME, of lawful age, being produced, sworn, and examined on the part of the complainant, testified as follows:

(By Mr. JOHNSTON:)

Question 1. State your name, age, residence, and occupation.

Answer. My name is George J. Kaime; I am 36 years old; I reside at 805 Grand avenue, St. Louis, and am secretary of
83 the Missouri State Mutual Insurance Company, No. 712 Chestnut street.

Q. 2. Are you connected with the Groom Shovel Company?

(Question objected to because it is not properly in rebuttal and because it is incompetent and irrelevant.)

A. No, sir.

Q. 3. Are you familiar with the business of the Groom Shovel Company?

A. No, sir.

No cross-examination.

Signature waived.

Edward K. Holton.

EDWARD K. HOLTON, of lawful age, being produced, sworn, and examined on the part of the complainant, testified as follows:

(Defendants' counsel objects to the testimony of this witness because it is incompetent and not in rebuttal and because any testimony which he should seek to give will be irrelevant and immaterial; and, in order not to encumber the record constantly with

these objections, defendants' counsel desires to enter here, once for all, these objections to each and every question that may be propounded to the witness by the complainant's attorney.)

(By Mr. JOHNSTON:)

Question 1. State your name, age, residence, and occupation.

Answer. My name is Edward K. Holton; my age is 45 years; I reside at Webster Groves, Missouri; I am a shovel-maker.

Q. 2. You are a member of the Groom Shovel Company?

A. Yes, sir.

Q. 3. How long have you been connected with it?

A. Ever since its organization.

84 Q. 4. You are familiar with the making of shovels and the different construction of shovels that is common to the trade, are you not?

A. To a certain extent.

Q. 5. Please look at the shovel or spade I now show you and state whether or not that is the old form of handle strap.

(Counsel for the defendants objected to the question as not in rebuttal, as incompetent, and a violation of the stipulation heretofore made.)

A. I don't exactly understand your question. I will say it is a form that is still in vogue.

Q. 6. It is an old form, is it?

A. It is a common form—the general form.

Q. 7. Such as was in common use prior to the invention of what is known as the socket strap?

(Same objection as heretofore.)

A. That was in use prior to the Mr. Myers socket strap.

Q. 8. Was that the general form of handle strap used prior to the introduction of all the socket handle straps?

(Same objection as heretofore.)

A. This is the common form of strap that was in existence before Mr. Myers made a socket strap, and is still in existence to-day—always has been.

(The shovel or spade above referred to is offered in evidence and marked "Exhibit Old Form of Handle Strap of Shovel or Spades.")

Q. 9. I now hand you a shovel having what is known to the trade as a socket handle strap, and will ask you when you first became acquainted with that construction of handle strap and socket.

(Objected to for the same reason as above given.)

A. We made shovels, to my knowledge, ten years ago that had straps. They were gotten up particularly for the lead-smelters. They wanted a shovel so that the handle should be protected and the strap closed down here (indicating) and probably run up about

ten or twelve inches, and then it tapered off up the handle;
85 the straps were cut tapering. That was in the neighborhood of ten or eleven years ago. I also saw similar shovels made by other parties. I think the first I saw was in San Francisco soon after Pacific railroad was finished. I think it was the year the road was finished.

Q. 10. I will put the question in another form. When did you first become acquainted with shovels of the construction shown in this shovel that I now show you?

(Same objection as heretofore.)

A. I can only answer that just as I answered it before. That was the first I became acquainted with the construction of a shovel in that shape.

Q. 11. You are familiar with the construction of shovels shown in the letters patent granted to Charles W. Hubbard, are you not?

(Same objection as heretofore.)

A. Yes, sir.

Q. 12. In what respect does this shovel I now show you resemble the device shown in the patent of Charles W. Hubbard, as shown at page 55 of the Defendants' Record.

(Same objection as heretofore.)

A. Do you mean that I am to take that cut and say how it resembles that; is that it?

Q. 13. Yes, sir; that is just it exactly.

A. Well, it has this resemblance: As shown here in the cut I should judge that there was a meeting of the straps at the junction of the shoulder of the shovel plate and the handle strap, and then it tapers similar to this shovel now shown.

(The shovel last referred to is offered in evidence and marked "Exhibit Groom Shovel, St. Louis.")

Q. 14. I show you now a ditching shovel. Have you the same answer to make with relation to that which you have already made to the former question in relation to the handle straps?

(Same objection as heretofore.)

A. Well, do you mean to ask me if we made ditching spades that way; is that the question?

86 (Last question repeated.)

A. I don't exactly understand why you introduce that spade. Do you ask me if that refers to the straps alone as applied to the shovel or to the ditching spade—which?

Q. 15. It don't make any difference whether to the ditching spade or to the shovel.

A. Then I should answer the same.

Q. 16. Are you familiar with the shovel that is made and manufactured by H. M. Myers & Co., Beaver Falls, known as the socket-handle-strap shovel and spade?

(Objected to as heretofore.)

A. Yes, sir; I am.

Q. 17. In what respect do these exhibits, Groove Shovel, St. Louis, and the Drain Spade, differ from the H. M. Myers shovel?

(Same objection as heretofore.)

A. The Myers straps form a curvature and come together about an inch or an inch and a half from the top of the shoulder of the plate, and then it is cut out, forming about a half circle or a quarter of a circle—about a half circle on the two straps. Each strap is about an eighth of an inch narrower than the shovel shown, and the straps run perfectly parallel and do not taper like the St. Louis Shovel Company Exhibit.

Q. 18. That is the only difference between the Exhibit St. Louis Shovel and the Myers, is it—the tapering of the strap?

(Same objection as before.)

A. That is the substantial difference.

Q. 19. Will you please describe the difference between the shovel marked Exhibit Groom Shovel, St. Louis, and that construction of shovel shown and described in the Hubbard patent as set up in the defendants' record?

(Same objection as heretofore, and also that the witness has not been shown to be an expert in these matters except in the manufacture of his own shovels.)

87 A. I thought I answered that substantially before. The main difference, as I understand, is that the union of the strap in the Hubbard patent is not as long—that is, it has not the constant tapering that the Groom shovel has.

Q. 20. The degree of union of the straps in the socket of Exhibit Groom Shovel, St. Louis, is much greater than that shown in the Hubbard patent, is it not?

A. Yes, sir.

No cross-examination.

Signature waived.

UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

I, L. L. Walbridge, a United States commissioner within and for the district aforesaid and duly qualified under the laws of the United States to take depositions for use in the district courts of the United States, do hereby certify that on the 28th day of June, 1887, I was attended at the office of the circuit clerk of the United States circuit court for the eastern district of Missouri, in the city of St. Louis, by James J. Johnston, Esq., counsel for the complainant, and H. N. Pollard, Esq., counsel for respondents, and the witnesses, George J. Kaime and Edward K. Holton, who were of sound mind and lawful age and who were carefully examined, cautioned, and sworn to testify the whole truth in the matter of controversy aforesaid, and

their depositions were, by consent of parties, reduced to writing in short-hand by me in the presence of the witnesses and from their statements.

I further certify that it was then and there agreed by counsel that the transcript of said short-hand notes so taken, without the signatures of the witnesses thereto, might be read in evidence on the trial of said cause with the same force and effect as if said transcript had been signed by said deponents.

88 I further certify that the foregoing is a true and faithful transcript from said short-hand notes, and that I am not of counsel or attorney for either of the parties to said cause or in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 28th day of June, A. D. 1887.

L. L. WALBRIDGE,
U. S. Commissioner, Eastern District of Missouri.

89 United States Circuit Court, Western District of Pennsylvania.

MYERS *vs.* THE GROOM SHOVEL COMPANY. } In Equity. No. 3. November Term, 1884.

It is hereby stipulated and agreed that the defendants in the above case may at any time up to and during the tenth day of May, 1886, examine witnesses as to knowledge, use, manufacture, or sale of shovels, spades, or other tools alleged to anticipate the patent sued, upon which this suit is brought, with the same effect as though said witnesses, their residences, and the places where they had such alleged prior knowledge had been duly set out in the answer heretofore filed by the defendants; complainant's counsel to be notified by telegraph on Monday, May third, if such depositions are to be taken on Wednesday, the fifth, and, if later, to have notice two days before said depositions are taken.

JAMES J. JOHNSTON,
Of Counsel for Pl'ff.

90 United States Circuit Court, Western District of Pennsylvania.

MYERS *vs.* THE GROOM SHOVEL COMPANY. } In Equity. No. 3. November Term, 1884.

It is agreed that the depositions taken in behalf of the complainant may be delivered to complainant's counsel by the examiner for use in printing and be by him regularly filed in court with the same effect as though regularly filed by the examiner; said depositions to be filed not later than June first, 1886.

FRANCIS T. CHAMBERS,
Solicitor for Defendants.

91 Circuit Court of the United States, Western District of Pennsylvania.

MYERS
vs.
GROOM SHOVEL CO. } In Equity.

It is hereby agreed and stipulated by and between counsel for the respective parties that the complainant shall have until June 1st to complete taking depositions in rebuttal, and that the case shall be within a week from said date ready for hearing, so far as the printing of the record is concerned, and copies of said printed record given to counsel for the respective parties. Further, it is agreed that the case shall be argued before either or any of the judges of the above court who will consent to have the case on a date between June 7th and July 1st, 1887, and that such date of hearing may be fixed by either party with the court.

It is further agreed that no testimony shall be considered as in the case except such as may be filed in court and printed before June 7th, 1887.

FRANCIS T. CHAMBERS.
JAMES J. JOHNSTON.

Apr. 22, '87.

92 Circuit Court of the United States, Western District of Pennsylvania.

MYERS
vs.
THE GROOM SHOVEL COMPANY. } No. 3. November Term, 1884.

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the defendants may prove and offer in evidence the hereinafter-described publications or duly authenticated copies thereof with the same force and effect as though they had been duly pleaded and set out in the answer herein as publications of a date prior to the invention by H. M. Myers of the invention described and claimed in letters patent No. 208,258, of September 24, 1878. This stipulation, however, is not to be construed as a waiver by the defendants of any objection that can or may be taken to the said publications other than of their not being set out in the answer—

The publications referred to being the following:

"Cyclopedia of Agriculture, Practical and Scientific," by John C. Morton, published by Blackie & Son, Glasgow, Edinburgh, and London, 1851, Vol. I, pages 681 and 682, Figs. 288 to 301.

"Forster's Algemeine Bauzeitung," published at Vienna, 1864, page 336, lines 30 to 40, inclusive, and drawings therein referred to.

93 "Encyclopedia pratique de l'agriculteur," publiee par Firmin Didot Freres, Fils et Cie. Paris, 1861. Tome 6, column 377, lines 11 to 32, inclusive. Figs. 36 and 37. Article—Drainage.

"Encyclopedie pratique de l'agriculteur," publiee par Firmin Didot Freres, Fils et Cie. Paris, 1860. Tome 3, column 374, lines 19 to 32, inclusive. Figs. 114 and 115. Article—Beche.

"Allgemeine Bauzeitung mit Abbildungen," by Prof. Christ, Ffriedr Ludwig Forster. Achtzehnter Jahrgang. Vienna, 1853, page 147, lines 18 to 24, inclusive. Plate 560, Figs. 11 and 12. Article—Der Wasserbau in der Landwirthschaft.

GEORGE SHIRAS, JR.,
JAMES J. JOHNSON,
Counsel for Complainant.
FRANCIS T. CHAMBERS,
Of Counsel for Defendants.

January 16, 1886.

94 Circuit Court of the United States, Western District of Pennsylvania.

MYERS *vs.* THE GROOM SHOVEL COMPANY. } In Equity. No. 3. November Term, 1884.

Please take notice that on Tuesday, April 27th, 1886, witnesses will be examined in behalf of the defendant in the above case, before a properly qualified officer, at the office of The Ames Shovel Company, North Easton, Massachusetts. Examination will begin at eleven o'clock in the morning.

You are invited to attend and cross-examine if you see fit.

FRANCIS T. CHAMBERS,
Attorney for Defendants.

To George Shiras, Esq.

Service accepted this 20th day of April, 1886.

GEORGE SHIRAS, JR.,
Plaintiff's Counsel.

95 United States Circuit Court, Western District of Pennsylvania.

MYERS *vs.* GROOM SHOVEL CO. } In Equity. No. 3. November Term, 1884.

Meeting held pursuant to the annexed notice, at the office of Oliver Ames & Sons' Corporation, North Easton, Mass., before me, Geo. W. Kennedy, notary public, acting examiner, this 27th day of April, 1886.

Present: James J. Johnston, for complainant, and Francis T. Chambers, for the defendant.

OAKES A. AMES, a witness for the defendant, being duly sworn according to law, in answer to questions by Mr. CHAMBERS, testifies as follows:

Q. 1. What is your name, residence, and occupation?

A. Oakes A. Ames; North Easton, Mass.; shovel-maker; of lawful age.

Q. 2. How long have you been engaged in the shovel business?

A. About forty years. Our concern is the oldest in the country.

Q. 3. Has your concern ever made shovels in which the straps practically formed a socket near their place of union with the blade; and if so, when did you make such shovels?

96 A. We have made what we called the socket shovels ever since I can remember. The shovel I refer to had a solid welded socket.

To identify these the witness points out figures 63 and 103 of the shovel catalogue dated Nov. 1, 1885; marked for identification "O. Ames & Sons' Corp. Catalogue," April 27, 1886.

Witness continues:

We also made a shovel, which went to the California, market which had a very wide strap, and they met or nearly met close to the blade and formed a socket which nearly or quite covered the handle. I have a sample here (producing a shovel).

Q. 4. Please state when shovels like the samples you have produced were made by your company and, as nearly as you can recollect, in what quantity.

A. I think that shovel must have been made fifteen or twenty years ago; perhaps more. We had quite a large trade for them for the California market. We were told that they were used for washing gold. In the old-fashioned sluice-boxes, in turning the shovel they wore out and broke the handle, and they wanted a handle that was protected from the wear and strengthened, and we made a shovel like the sample for them.

Q. 5. To the best of your recollection, in what period of years were most of the shovels like sample made by your company, and in what quantities?

A. My recollection would be that most of them were made from fifteen to twenty-five years ago. We certainly made them twenty years ago. I think we must have made several hundred dozen. I know that we used to pack them in 10-doz. cases.

Q. 6. How long has this particular spade you produce been in your possession?

A. I couldn't tell that. It has certainly been in our possession fifteen years; perhaps twenty-five years.

97 (The spade produced by the witness is offered in evidence and marked "Defendants' Exhibit Ames' California Spade.")

Q. 7. I notice that while the straps on the exhibit meet for about five inches from the blade on one side they do not quite form a union on the opposite side. Was this intentional, or what, if any, reason can you give for the difference?

A. I think that the idea was to completely cover the handle for 8 inches from the blade; but if the handle was not put exactly in the middle or if the handle was larger than usual the straps would not cover one side. The idea was to have a strap that would just

about cover an average-size handle from 6 to 8 inches above the blade.

Q. 8. You speak of the handle being larger than usual. Do handles vary in diameter, as a rule?

A. They do. We intend to have handles of the same size, but different manufacture and shrinkage of wood make them vary.

Q. 9. So that straps made to exactly cover the standard-size handle would fall short on some and overlap on others?

A. Yes.

Q. 10. Have you any other spade in your possession which you have had for some time and in which the straps substantially form a union round some part of the handles? If so, please produce such spade and state how long you have had it.

A. Here is a spade which I think was made in England. It was sent to us a great many years ago for us to make some like it. I think we never made any like it, but sent something in the place of it that answered the purpose. My recollection is that we have had this spade in our possession from fifteen to twenty-five years.

(Spade produced by witness offered in evidence and marked "Defendants' Exhibit Ames' English Spade.")

98 Q. 11. Have you any other spade or shovel in your possession which has its straps arranged to form a union about the handles?

A. I have a shovel here which I think was made in Baltimore by the Kimball Shovel Company. I think we have had this shovel from twelve to fifteen years.

(Shovel offered in evidence, marked "Defendants' Exhibit Ames' Baltimore Shovel.")

Q. 12. Besides the "Exhibit Ames' California Shovel" did your company make any other shovel prior to 1875 in which the straps formed a union around the handle and inclosed it for some distance up from the blade?

A. Yes; we have occasionally made shovels for using around furnaces when they wanted to protect the wood from the fire. We made very wide straps that would entirely or very nearly cover the handle. We have had such shovels as these from twenty to twenty-five years.

Cross-examination by Mr. JOHNSON:

X Q. 13. How long is it since you manufactured spades or shovels like the "Defendants' Exhibit Ames' Californian Spades?"

A. I don't think we have made any for the Californian market for fifteen years; we have made some similar to it for fire purposes within ten years.

X Q. 14. Do you now or did you ever make shovels or spades like "Defendants' Exhibit Ames' California Spade" for the general shovel market? I mean by general shovel market the hardware trade throughout the States.

A. Those were sold to the hardware trade. Whether they went directly to the California trade or were sent to the New York or Boston trade I do not remember.

X Q. 15. They were manufactured as special brands of shovels or spades for a special purpose and a special locality and
99 not as an article kept in stock for the general trade. Is that so?

A. I think they were all intended for washing gold in California.

X Q. 16. How long is it since you manufactured shovels or spades like "Defendants' Exhibit Ames' English Spade?"

A. We never manufactured spades like that.

X Q. 17. How long is it since you manufactured shovels or spades like "Defendants' Exhibit Ames' Baltimore Shovel?"

A. We never made any like it.

OAKES A. AMES.

Sworn to and subscribed before me April 27, 1886.

[SEAL.] GEO. W. KENNEDY,
Notary Public.

JOHN CARR, a witness for the defendants, being duly sworn according to law, in answer to questions by Mr. CHAMBERS testifies as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Carr; age, 62; North Easton; shovel-maker; in the employ of O. Ames & Sons' Corporation; have been in their employ about fifty years.

Q. 2. I hand you a spade—"Ames' California spade." Please state when and for how long such spades were made, and where.

A. These spades were made here upwards of twenty or twenty-five years ago. They were made for several years at different times. I should think there were two to three hundred dozen made. They were made during the time they were washing gold by hand in California.

100 Q. 3. Did you personally have anything to do with the making or fitting up of these spades?

A. Yes; putting the handles in and putting the rivets in the straps.

Q. 4. I see that the spade has its straps meeting for about five and a half inches on one side, while on the other they do not quite meet. Please explain the reason for this, and state whether all the spades of this kind was alike in this respect.

A. The handles vary in size and a hand would have to be very particular in setting his rivets or they would be more one side than the other. Small handles would uniformly close down tight or lap, while with large handles there might be a space either on one side or the other.

(It is agreed by complainant's counsel that this witness will testify as to the Ames English spade and Ames Baltimore shovel that they have both been in the possession of the Ames Company and

known to him for fifteen years last past, and it is hereby stipulated that his testimony shall be considered as having been given to that effect.)

JOHN CARR.

Sworn to and subscribed before me April 27, 1886.
[SEAL.] GEO. W. KENNEDY,
Notary Public.

PATRICK F. DERBY, a witness for the defendants, being duly sworn according to law, in answer to questions by Mr. CHAMBERS testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Patrick F. Derby; age, thirty-eight years; residence, North Easton; shovel-maker; employed by the Oliver Ames & Sons' Corporation; have been in their employ nearly twenty-two years.

101 Q. 2. Please look at the spade which I now hand you, and state when you first saw such spades and under what circumstances.

(Handing witness Ames' California spade.)

A. It is twenty-one years ago, as near as I can place it, since I begun labelling spades like this. I labelled them for the man that was putting them in cases to be sent to California. This was at the manufactory of O. Ames & Sons here at North Easton.

Q. 3. How long after you first saw these spades did they continue to make them here?

A. I never saw but two lots—this one that I labelled and another lot that I saw when I was shipper. This last lot was about twenty years ago.

Q. 4. How long has this particular spade which I handed you been in the Ames shop, to your knowledge, and who has had care of it?

A. It has been under my care, in the room where we keep samples since the room was built. That room was built shortly after the Centennial, 1876. This, or spades like it, has been up in the loft ever since I first came here.

Q. 5. I hand you "Defendants' Exhibit Ames' Baltimore Shovel and Ames' English Spade." How long have this spade and shovel been here in the possession of the Ames Company?

A. The spade has been here ever since I came here. The shovel has been here from ten to twelve years.

PATRICK F. DERBY.

Sworn to and subscribed before me April 27, 1886.
[SEAL.] GEO. W. KENNEDY,
Notary Public.

102 I, Geo. W. Kennedy, notary public for the county of Bristol and Commonwealth of Massachusetts, and acting special examiner by agreement of counsel, do hereby certify that a

meeting was held before me at the office of Oliver Ames & Sons' Corporation, at North Easton, Mass., this 27th day of April, 1886; that the complainant was present in person and by his counsel, James J. Johnston, Esq., and the defendants by their counsel, Francis T. Chambers, and that Oakes A. Ames, Patrick F. Derby, and John Carr having been duly sworn and examined as witnesses for the defendants, their testimony, as herewith attached, was by me reduced to writing and read over to and signed by the witnesses, the exhibits referred to in said depositions being marked as noted therein.

[SEAL.] GEO. W. KENNEDY,
Notary Public, Acting as Special Examiner.

103 U. S. Circuit Court, Western District of Pennsylvania.

H. M. MYERS
v.
GROOM SHOVEL CO. } No. 3. Nov'r Term, 1884.

It is agreed and stipulated that defendants' counsel, F. F. Chambers, may take the depositions this day taken in North Easton, Mass., and the exhibits put in evidence in connection therewith, into his possession, and that he may file the same with the same effect as though regularly filed by the examiner.

JAMES J. JOHNSTON,
Of Counsel for Pl'f.

North Easton, Mass., April 27, 1886.

Filed May 23, 1887.

H. D. GAMBLE, *Clerk.*

103½ Circuit Court of the United States, Western District of Pennsylvania.

MYERS
vs.
THE GROOM SHOVEL COMPANY. } No. 3. In Equity. November Term, 1884.

Please take notice that on Monday, April 26, 1886, witnesses will be examined in behalf of the defendant in the above case before a properly qualified officer, at my office, No. 901 Walnut street, Philadelphia, Pennsylvania. Examination will begin at eleven o'clock in the morning.

You are invited to attend and cross-examine if you see fit.

FRANCIS C. CHAMBERS,
Attorney for Defendants.

To George Shiras, Esq.

Service accepted 20th day of April, 1886.

GEORGE SHIRAS, JR.,
Plaintiff's Counsel.

104 In the Circuit Court of the United States in and for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } No. 3. November Term, 1884.

Testimony on behalf of defendant taken before Samuel Bell, Esq., stipulated examiner, at the office of Francis T. Chambers, Esq., No. 901 Walnut street, in the city of Philadelphia, pursuant to notice, this 26th day of April, A. D. 1886, and on subsequent days by adjournment.

Present: James J. Johnston, Esq., counsel for complainant; Francis T. Chambers, Esq., counsel for defendants.

HENRY M. MYERS, a witness produced on behalf of defendant, being duly affirmed, deposes and says as follows:

Q. 1. You are the same Henry M. Myers, complainant in this suit, are you not?

A. Yes, sir.

Q. 2. You testified, when examined as a witness for the complainant, in answer to cross-questions 18 and 19, that Hubbard, Bakewell & Company, of Pittsburgh, were making what was called the "hub socket strap," which you claimed was an infringement of your patent. Please examine the drawings of letters patent No. 220,760, granted to Charles W. Hubbard, of Pittsburgh, October
105 21, 1879, for an improvement in shovels, and state whether this drawing substantially represents the hub socket strap of which you spoke in your cross-examination.

A. This drawing represents the socket strap as first made by them, but the socket strap as now made by them—that is, some of them that I have seen—are brought much closer on the strap than represented in the drawing, for about one and a half inches above the blade on the handle. I would add, so as to meet in some cases, while the drawing does not show the straps meeting or touching each other; but I claim it to be substantially the same.

Q. 3. You mean that you consider a shovel made like the drawing in this patent an infringement of your patent?

A. I do.

(Counsel for defendant offers in evidence duly certified copy of patent referred to, and the same is marked "Defendants' Exhibit Hubbard's Patent.")

HENRY M. MYERS.

Affirmed and subscribed to before me this 26th day of April, A. D. 1886.

SAMUEL BELL,
Special Examiner.

EMMANUEL P. HILTEBRAND, a witness produced on behalf of defendants, being duly sworn, deposes and says as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Emmanuel P. Hiltebrand; 31 years of age; 2502 Master street, Philadelphia, and by occupation librarian of the Franklin Institute.

106 Q. 2. State if there is in the Franklin Institute Library a copy of the publication entitled a Cyclopedia of Agriculture, practical and scientific, edited by John Chalmers Morton. If so, will you produce the same?

A. Witness produced book in two volumes, which the examiner copies the title page as follows:

A CYCLOPEDIA

of

AGRICULTURE

PRACTICAL AND SCIENTIFIC,

in which

The theory, the art, and the business of farming are thoroughly and practically treated by upwards of fifty of the most eminent, practical, and scientific men of the day.

Edited by

JOHN CHALMERS MORTON.

Illustrated by numerous engravings.

Volume 1.

London:
Blackie & Son, Paternoster Buildings, E. C.
Glasgow and Edinburgh.
1875.

It is hereby stipulated and agreed by counsel for the respective parties that the above edition of 1875 may be referred to and used in evidence instead of the edition of 1851, referred to in the amended answer.

The publication to be considered as one made in 1875 and not in 1851.

It is further agreed, to avoid the necessity of putting the book itself in evidence, that the examiner shall copy and certify such parts of the text as are deemed relevant by either party, and that photographic reproductions of any cuts or plates that are deemed relevant in the editions of 1875 or 1851 shall be made and certified.

107 Q. 3. Have you any other or earlier editions of this publication in the Franklin Institute Library?

A. Not that I am aware of.

Q. 4. How long has this publication been in the library?
A. To my knowledge since 1876.

EMMANUEL P. HILTEBRAND.

Sworn and subscribed to before me this 26th day of April, A. D. 1886.

SAMUEL BELL,
Special Examiner.

RUDOLPH M. HUNTER, a witness produced on behalf of defendants, being duly sworn, deposes and says as follows:

Q. 1. Please state your name, age, residence, and occupation.
A. Rudolph M. Hunter; 29 years of age; Philadelphia; and by occupation, consulting engineer and solicitor of patents.
Q. 2. Have you had any experience in making and understanding mechanical drawings and drawings intended to illustrate different mechanical constructions and forms? And, if so, please give the extent of your experience in this line.
A. I have. For the last fifteen years I have been constantly engaged in the preparation of all kinds of mechanical and illustrated drawings, both for the construction of machinery and implements and for illustrating principles involved in peculiar constructions and inventions. I have also had considerable experience with engravings of what is known as wood cuts.

(Mr. Chambers offers in evidence a copy of lines 18 to 24 of page 147 of "Forster's Allgemeine Bauzeitung," published in
108 Vienna in 1853, said copy being duly certified by the Commissioner of Patents from the bound volumes of the Patent Office, and including the drawings, figures 11 and 12, from plate 560, and the same is marked "Defendants' Exhibit Forster's Allgemeine Bauzeitung.")

Q. 3. Please examine the drawings attached to "Defendants' Exhibit Forster's Allgemeine Bauzeitung" and state whether you understand the construction of the spades, handles, and straps shown therein.
A. I made the examination called for, and believe I fully understand the construction illustrated in the said drawings.
Q. 4. Both of these drawings, figures 11 and 12, show the spade by a front elevation. Have you made and can you produce drawing showing side view of these same spades as you understand them?
A. Yes, sir. The drawing which I now produce represents the side elevation of said spades.

(Drawing produced by the witness offered in evidence and marked "Defendants' Exhibit Hunter's Side View of Spades," shown in "Defendants' Exhibit Forster's Allgemeine Bauzeitung.")
(Counsel for plaintiff objects to the last offered exhibit, Hunter's side view, being the last exhibit offered in evidence, as not admissible under the pleadings.)

(Counsel for the defendant offers in evidence the extract from "Morton's Cyclopedia of Agriculture," entitled Covered drains, beginning on page 681 of volume I and continuing to the end of the first paragraph on page 682, said paragraph to be copied and certified by the examiner; also the cuts on said pages 681 and 682, beginning with figure 288 and down to and including figure 301, said cuts to be reproduced by photography and certified by the examiner; and the said extracts and cuts are marked "Defendants' Exhibit Morton's Cyclopedia.")

109 Q. 5. I hand you volume I of "Morton's Cyclopedia of Agriculture." Please state whether you have carefully examined the cuts on pages 681 and 682, and whether you understand the construction of the spades, their sockets, straps, and handles depicted in the cuts 288, 289, 291, 294, and 295.

A. I have carefully examined said cuts and have given particular study to those five specially referred to, and believe I fully understand the construction of the spades intended to be illustrated by said cuts.

Q. 6. Have you made an enlarged view reproducing the cut, figure 288, and also showing the spade illustrated in said figure by side and front views? If so, please produce the same.

A. I have. The drawing I now produce is such an illustration and is made on a scale three times the size of the illustration in "Morton's Cyclopedia of Agriculture."

Q. 7. Please compare your enlarged reproduction with the original and state whether there is any inaccuracy or mistake in your copy.

A. The perspective view of my drawing is supposed to correspond in every material particular with figure 288. I have left off all shading, merely giving the general outlines of the spade. This perspective view I made upon the same sheet with the side and front views, so that my interpretation of the said side and front views might be more readily understood.

Q. 8. Please state what the small cut to the right of your sheet of drawing represents.

A. It represents one of the socket pieces and straps spread out flat and as if removed from the blade of the shovel.

(Drawing offered in evidence, and the same is marked "Defendants' Exhibit Hunter's Drawing of Spade, Figure 288 of 'Morton's Cyclopedia of Agriculture.'")

110 (Counsel for plaintiff objects to Exhibit Hunter's Drawing of Spade, Figure 288 of "Morton's Cyclopedia of Agriculture," and reserved his reasons for so doing until the hearing of this cause.)

(Defendants' counsel gives notice that he shall object to the argument of any objection not duly taken during the introduction of evidence in this cause.)

Q. 9. Have you made and can you produce a reproduction of figure 295, and also drawings showing the front and side view of the spade illustrated in figure 295, as you understand it?

A. I have made such a drawing, and now produce the same. The scale of this drawing is three times the size of the illustration, figure 295, in "Morton's Cyclopedia of Agriculture."

Q. 10. Please compare your enlarged drawing of figure 295 with the original which I hand you, and state whether there is any inaccuracy in your enlargement, or anything which is not clearly shown in the original.

A. I have made the comparison and do not find any material or practical difference. I have left off all shading on this drawing, as in the other instance, for the same reason.

(Drawing offered in evidence and the same is marked "Defendants' Exhibit Hunter's Drawing of Spade, Figure 295 of 'Morton's Cyclopedia of Agriculture.'")

(Counsel for plaintiff objects to Exhibit Hunter's Drawing of Spade, Figure 295 of "Morton's Cyclopedia of Agriculture," and reserves his reasons for so doing until the hearing of this cause.)

Q. 11. Please state how you came to make these enlarged drawings which you have produced and which have been offered in evidence, and state what instructions, informations, or suggestions were given or made to you in connection therewith.

A. I was instructed to go to the Franklin Institute and make an accurate copy of the spades and implements shown on pages
111 681 and 682, including figures 288 to 301, of "Morton's Cyclopedia of Agriculture." I did so, and made the drawing at the Franklin Institute, which was a tracing from these figures. No instructions, information, or suggestions were given me as to what I was particularly to note. I was simply instructed to make an accurate copy of said figures. After making the complete set of drawing, including figures 288 to 301, I then prepared the enlarged drawings, which I have produced, as full illustration of my views as to the construction of spade intended to be illustrated by figures 288 and 295. No instruction, information, or suggestions *was* given me in the preparation of these drawings beyond the request that I should make a side and front view, side by side with the perspective view, using my own judgment as to what such side and front view would show.

Q. 12. Had you at the time of making these enlarged drawings seen a copy of Henry M. Myers' patent No. 208,258, or was any other patent relating to shovels or similar articles shown to you or called to your attention in connection with the cuts in the "Cyclopedia of Agriculture"?

A. I saw no patent and had no information given me; simply understood that the drawings might be needed in a suit, but did not know who the complainant or defendants were or what was the point at issue.

Adjourned to meet Wednesday, April 28, 1886, at 11 o'clock a. m.

WEDNESDAY, *April* 28, 1886.

Met pursuant to adjournment.
Present: Counsel as before.

The examination of RUDOLPH M. HUNTER continues:

112 (Mr. Chambers tenders the witness for cross-examination, stating that he intended to examine him further as an expert as to the state of the art shown in various publications, etc., the foregoing testimony being simply as to his understanding as an expert draughtsman of the exhibits referred to in his testimony.)

(Cross-examination waived by J. J. Johnson, Esq., counsel for complainant.)

R. M. HUNTER.

Sworn and subscribed to before me this 28th of April, A. D. 1886.
SAMUEL BELL,
Special Examiner.

RUDOLPH M. HUNTER recalled:

Q. 1. Please state what experience you have had in the study and comparison of mechanical structures and devices and of letters patent and publications relating thereto.

A. I am professionally educated as a mechanical engineer, and for over ten years have been engaged in the construction of all kinds of machinery. Since 1871 I have been engaged in patent business, and from that time to the present have devoted constant attention to the study of patent matters, and have prepared many hundreds of applications and obtained patents thereon. For many years past I have given particular attention to expert business, and during that time have been frequently called upon to testify as a mechanical expert in suits involving infringement of patents.

Q. 2. I hand you a copy of H. M. Myers' patent, No. 208,258, of September 24, 1878. Please state whether you have carefully
113 examined said patent and understand the alleged invention therein shown and described. To assist you in your examination of the patent I hand you also a certified copy of the file wrapper and contents of the said patent (said paper being offered in evidence as "Defendants' Exhibit Myers File Wrapper and Contents.")

A. Yes, sir; I have made the examination referred to in the question and believe I fully understand the invention set out in the said letters patent and embodied in the claim thereof.

Q. 3. By the "Exhibit Myers File Wrapper and Contents" it appears that to the application as originally filed letters patent No. 186,520, granted to E. A. Barnes January 23, 1877, for improvements in scoops, was cited as an anticipation; that in view of this reference an amendment was made in the claim, and that to the amended application letters patent No. 113,805, granted to D. G. Smith April 18, 1871, for an improvement in ferrules, and letters patent No. 160,170, granted to P. B. Cunningham February 23, 1875, for an improvement in shovels, were cited as anticipations; that the applicant then amended his application by inserting the

disclaiming clause which preceded the claim. I hand you certified copies of the letters patent referred to and ask you, first, to state what you understand to be the distinction drawn by the patentee between the structure shown in his patent and these references; and, secondly, you will please state whether or not, in your opinion, there is any practical and material difference between the structure shown and described in Mr. Myers' patent and the structure shown and described in the said references.

(Defendants' counsel offers the said certified copies in evidence, and the same are marked respectively "Defendants' Exhibit Barnes Patent," "Defendants' Exhibit Smith Patent," and "Defendants' Exhibit Cunningham Patent."

114 A. Referring to these references, I find that in the Barnes patent is disclosed a construction of shovel or scoop in which the blade of the shovel is provided with two straps which are curved or bent so as to form a socket in cross-section. The wooden handle is fitted in between these two straps which forms the socket. In this patent the straps meet on their sides to form a socket throughout their entire length.

In the Smith patent is disclosed an invention for attaching handles to shovels, etc., which consists in a socket or tubular portion having two extensions or straps, which socket and straps receive the wooden handle. The other end of this ferrule or socket is secured to the blade of the shovel, &c.

In the Cunningham patent is disclosed a construction in all material respects the same as that in the Smith's patent, with the exception of the method of attachment of the shovel blade to the ferrule or socket.

Now, referring to the Myers patent, we find there a construction shown in which the wooden handle is secured to the blade of the shovel by two straps, which at their parts next to the shovel blade are bent or curved around the handle to form a socket or ferrule. In this construction the lower part of the wooden handle is received in the socket or ferrule portion and also by the straps which extend up further upon the body of the handle.

Comparing this construction as exhibited in the Myers patent with the three references above referred to, we find that it was not new to secure a handle to the shovel blade by means of straps terminating in the socket, as such a construction is clearly shown in the Smith patent and also the Cunningham patent, and, further, that it was not new to form the straps in a manner to form sockets throughout their length by having said straps bent around the handle to form a union or substantial union, as such construction is clearly shown in the Barnes patent.

115 These constructions being old, the distinction upon which the patent of Myers is based is that the straps which extend up upon the body of the handle must be bent around the said handle to form a union close to the shovel blade and form a socket, but in which the remaining parts of the straps further up upon the handle shall not meet upon their sides.

In regard to the second part of the question I fail to see that there is any practical difference or advantage gained in the Myers construction over those set out in the said reference patents. The Myers construction is substantially identical with what is shown in the Barnes patent if the straps forming the socket at the upper end of the Barnes patent were slightly spread or extended with less width. It would be the same as the construction shown in the Smith and Cunningham patents if the sockets of the said patents were split longitudinally, as shown in the Barnes patent.

The construction shown in the Barnes patent, in which the straps form a socket throughout its entire length, is undoubtedly much stronger than the Myers construction. I therefore fail to see that there is any particular difference between what is shown and claimed in the Myers patent and what is shown in these reference patents.

Q. 3. I show you "Defendants' Exhibit Forster's Allgemeine Bauzeitung." Please state whether or not, in your opinion, there is any practical or substantial difference between the devices patented by Mr. Myers and the instrument constructed as shown in said exhibit.

A. There is no practical difference, in my opinion, as the straps in the "Exhibit Forster's Allgemeine Bauzeitung" gradually enlarge in width as they approach the blade and are rolled down and around the handle close to the shovel blade in such a manner as to form sockets in all material respects such as is embodied in Myers' patent.

The depth of the socket in the Myers patent is without limitation and may be an eighth of an inch or a foot; therefore the length of this socket is immaterial.

116 (Defendants' counsel offers in evidence certified copy from the bound volumes in the United States Patent Office of an extract and drawing from "Encyclopédie Pratique de L'Agriculture," by Firmin Didot Frieres, Fils et Cie, Paris, 1860, volume III, page 374, lines 19–27, inclusive; also a similarly certified copy of an extract from "Forster's Allgemeine Bauzeitung," Wrin, 1864, page 336, lines 30 to 40, inclusive, and drawing of the same, and the same are marked respectively "Defendants' Exhibits French Encyclopedia and Forster's Allgemeine Bauzeitung No. 2."

Q. 4. I hand you "Defendants' Exhibits French Encyclopedia and Forster's Allgemeine Bauzeitung No. 2." Please examine the same and state whether or not you find in them or either of them substantially the same device patented by Mr. Myers.

A. An examination of these exhibits discloses the fact that the handles are secured to the shovel blade by means of two straps extending up upon the handle, which straps as they approach the shovel blade are bent around the handle, making a socket by their union substantially in all material respects in the manner claimed by the said Myers. The lower end of the handle is received in the socket and riveted thereto. The straps in these exhibits, it is true, are shown at their extreme lower portions as made solid; but that is immaterial so far as the fact of the straps with part of their lower portions curved around the handle to form a socket is concerned.

The solid portions practically form part of the shovel blade and its neck.

Q. 5. Please look at the "Defendants' Exhibit Morton's Cyclopedia" and state whether you find shown and described therein any spades or other tools which are substantially and practically the same as the device shown in the Myers patent. In answering this question you may, if you see fit, refer to your drawings produced during your first examination.

117 A. On page 681 of said exhibit, "Morton's Cyclopedia," there are shown eight forms of spades or shovels, figures 288 and 295 being shown in drawings made by me and previously offered in evidence.

These figures show spades in which the handles are secured to the blade by means of two straps, which at their lower ends or close to the blade are bent around the handles, forming sockets, into which said handles extend. In addition to these two figures, which more clearly show these constructions, figure 291 might be referred to, which shows a construction in all material respects the same as that in the "Defendants' Exhibit Forster's Allgemeine Bauzeitung." These constructions, in my opinion, embody all the features of the Myers construction as claimed by him.

Q. 6. I show you spade marked "Defendants' Exhibit Ames California Spade." Please compare it with the specifications and drawings of the Myers patent and state whether or not, in your opinion, there is any difference between the construction of this spade and that shown and described in the Myers patent.

A. The California spade shows a construction in which the handle is secured to the blade by means of two straps, which approach each other at their ends next to the blade and form a union or practical union and make a socket, in which the lower part of the handle is encased. I therefore find the said California spade to have a construction in which the handle is secured by a socket and straps, the two straps forming a union near the blade and terminating in a socket substantially in the manner and for the purpose set out and claimed in the Myers patent.

It will be seen from this that the California spade has a construction having all the advantage of the ordinary handle straps combined with the socket, whereby the handle is greatly strengthened and securely attached to the blade, and consequently embodies all

118 the advantages of the Myers construction. The two constructions are practically the same.

Q. 7. I hand you now "Defendants' Exhibits Ames Baltimore Shovel and Ames English Spade." Please give your opinion as to the relation that these exhibits bear to the Myers patent.

A. Referring first to the Ames Baltimore Shovel, I find it to embody a construction in which the handle is secured to the blade by two straps, which receive the handle and are riveted to the blade at their lower part. These two strapes are curved in cross-section and unite a short distance above the blade, forming by their union a socket, into which the lower end of the handle extends. I therefore find in said exhibit a construction having all the advantages of

the ordinary handle straps combined with said socket, whereby the handle is greatly strengthened and securely attached to the blade, and I also find said exhibit to embody two straps, forming a union near the blade and terminating in a socket substantially in the manner and for the purpose set out in the Myers patent and embodied in the claim thereof.

In regard to Ames English Spade I find a construction in which the handle is secured to the blade by means of straps which terminate at the lower parts into a socket, in which the lower part of the handle is secured. The socket portion is formed as if a flat piece of metal were wrapped about the handle, forming but a single union; therefore it is a construction in all respects similar to what is shown in the Myers patent, if we conceive one of the unions (*g*) of the said Myers patent as eliminated. This difference, however, I consider immaterial, as this construction has all the advantage of the ordinary handle straps combined with a socket, whereby the handle is greatly strengthened and securely attached to the blade, and I find it to embody substantially the construction set out in the Myers patent and claimed therein.

119 (Defendants' counsel offers in evidence the shovel produced by H. M. Myers, as noted in the answer to the twenty-third cross-question of his deposition on behalf of the complainant, and the same is marked "Defendants' Exhibit Myers Taper Socket Shovel.)

(The "Complainant's Exhibit Myers" being the shovel made by complainant under his patent and referred to in the complainant's deposition, and the "Complainant's Exhibit Infringement" being the shovel made by the defendants and referred to by the complainant's witnesses in chief as having been defectively marked, it is agreed that the examiner shall re-mark each of them, said shovels having been sent here by complainant's counsel.)

Adjourned to meet Thursday, April 29, 1886, at 9 o'clock a. m.

WEDNESDAY, *April* 29, 1886.

Met pursuant to adjournment.

Present: Same counsel as before.

The examination of RUDOLPH M. HUNTER is resumed.

Cross-examination by J. J. JOHNSON, Esq., counsel for complainant:

X Q. 8. In your direct testimony as an expert you have stated that you have prepared many hundreds of applications and obtained patents thereon. Is it not a fact that a very large proportion of all applications for letters patent of the United States that are completed for examination are rejected in the first instance?

A. Yes, sir.

X Q. 9. Can you give about the percentage of cases that are rejected in the first instance and subsequently patents allowed on the

applications? And to enable you to make a near approximation in this respect I would refer you to the Commissioner's Report of 1869, page 10.

120 A. The figures in that report make it about 90 per cent., which correspond substantially with my experience. The reason of this, the erroneous number of rejections in the first instance, is that an inventor when he makes a small invention endeavors to cover the entire field of possibilities, and naturally his claims are too broad in the first instance.

(All after the word experience on the fourth line is objected to as not being responsive and not called for in the interrogatory.)

X Q. 10. The examinations, as a rule, in the American Patent Office are very full and thorough, are they not?

A. Prior to 1880 they were not, but of late years the enormous increase in the issue of patents has necessitated greater care on the part of the office, and their records are now far more complete.

X Q. 11. If the examinations were not full and thorough prior to 1880, how do you account for the extraordinary statement in the Commissioner's report that I have referred you to?

A. It is very easily accounted for, as an inventor generally insists on his claims being drawn so broadly that any one being fairly well versed in the art to which the invention relates could refer him to anticipations without any practical examinations into the state of the art. An examiner of the Patent Office who has charge of a particular class of inventions naturally can find without much search sufficient matter to anticipate the broad generic claim which the inventor has made in his application. Naturally, then, ninety per cent. of the applications might be rejected in the first instance and then after the proper limitations be allowed.

X Q. 12. Is it not a fact in your experience in the many hundreds of applications you have made for letters patent of the United States that you are frequently referred to patents as anticipating your claims; that when you came to examine into the difference

121 between the invention that you made application for and the one cited as anticipating your invention did it not so do, and, upon proper argument before the examiner, your claims were allowed?

A. In many cases such is the fact.

X Q. 13. Then it was not an unusual thing when Myers' application was rejected in the first instance?

A. Undoubtedly not.

X Q. 14. Then the Commissioner of Patents had good reason and just cause for granting Henry M. Myers' patent No. 208,258?

A. 'Tisn't likely that the Commissioner ever saw the patent until he signed it, and then he only saw the title page. The examiner gave the actions and allowed the case, and I do not think that he had any good reason nor just cause to grant the patent to Myers, for I fail to see any improvement over the state of the art which would entitle Myers to a patent.

X Q. 15. The examiner is a sworn public officer, is he not?

A. He is sworn to use his best judgment in carrying out the provisions of his office.

(Answer objected to, and the witness requested to give a categorical answer.)

(Repetition of question objected to, it having been already answered; also as not cross-examination and as utterly irrelevant and immaterial.)

A. I think my previous answer is clear and concise, for the examiner is only sworn to faithfully carry out the duties of his office, and he is always entitled to use his own judgment, provided it does not conflict with the rules of the Patent Office or the law. As I understand it, this is the extent of his being a sworn officer.

X Q. 16. I hand you certified copy of Smith patent, and also Myers patent, and request you to state if the claim in the Myers patent describes and covers the invention described and shown in Smith patent.

122 A. The claim of the Meyers patent states that the straps form a union at *g*, terminating in a socket. The Smith patent does not show a union, but shows the two straps united to form a solid socket, which is practically the same thing.

X Q. 17. I understand from your answer just given that Smith's invention does not consist of a combined socket and straps, the same being composed of two straps forming a union at *g* and terminating in a socket?

A. I did not say that it consisted of anything. I stated that it showed the combined socket and straps, the same being composed of two straps united near the blade and terminating in a socket. In dealing with the completed articles I consider that the open union at *g* in the Meyers patent is nothing more than the equivalent of a closed union in the Smith patent. At the very best it is only a colorable evasion in view of the Barnes patent and the numerous exhibits entered in this record. The things are practically alike.

X Q. 18. Is it not a fact that the Smith invention consists of straps *d* and a ferrule *a*, and that it does not terminate in a socket, and that there is no socket mentioned in the Smith patent?

A. Part marked *a* is a tubular extension of the two straps *d d*, and what is spoken of as the ferrule, and it requires no particular judgment to understand that it is also a socket, as it receives the end of the shovel handle. The mere fact that Smith called it a ferrule does not in the least prevent it from being a socket. It is unquestionably a socket. Smith claimed as his invention this ferrule or socket combined with a strengthening ring, and that is what his invention consisted of.

X Q. 19. Does Smith claim a combined ferrule or socket combined with a ring?

A. That is what I stated in my last answer. Yes, sir; he does.

123 X Q. 20. Does not the claim read: "A ferrule, 'A,' combined with a ring, 'B,' applied to the end thereof, and for the purpose specified"? Please give a categorical answer.

A. Come to exact words, it does.

X Q. 21. Smith represents in the drawings of his patent a section of a wooden handle, the straps D D, ferrule A, ring B, and a section of the shovel blade, shown by dotted lines. Does he show in said drawings or describe in the specification a socket in the blade of the shovel for the reception of the end of the wooden handle?

A. No, sir.

X Q. 22. I now hand you a copy of the Barnes patent, which please examine and state if the straps do not form a continuous socket for the reception of the wooden handle.

A. They form a continuous socket with the union on the sides, corresponding with the union *g*, set out in the Myers patent, forming part of his claim.

(All after the word "say" on the second line of the answer objected to as not called for in the interrogatory, and also as not responsive.)

X Q. 23. Does the drawings in the Barnes patent or the descriptive matter in the specification thereof show or describe the ordinary handle, straps, and socket for the reception of the lower end of the wooden handle, as described and shown in the Myers patent ("Exhibit Patent") and as shown in "Complainant's Exhibit Myers"? In order that you may clearly understand what I mean by the ordinary handle straps I now hand you a shovel having the ordinary handle straps without the socket, as shown in "Complainant's Exhibit Myers."

(By consent of counsel shovel referred to is offered in evidence and marked "Complainant's Exhibit Ordinary Handle Straps.")

A. As I understand it there is no prescribed width which must be given to these straps, but that it is customary they should not meet on the sides to form a union. The socket in the Barnes
124 patent is formed by the two straps being bent around the handle to form a union, and as these straps are made wide throughout their length this union will also extend throughout their length; therefore the Barnes patent does not show narrow extensions of the straps, which shall be less width than those parts which form the socket. They show an ordinary strap of full width throughout their length.

X Q. 24. Are you aware of the fact that in the manufacture of shovels that the practice is to secure the handle straps to the blade or make the handle straps in one piece with the blade before securing the wooden handle to the shovel?

A. In some instances the handle straps are forged integral with the blade, and, after being properly cut to shape, the handle is inserted and the straps rolled or pressed down to take the curvature of the handle. In other instances the handle straps are stamped out of sheet metal and are secured to the shovel blade and the handle then driven in between the straps, and the said straps are then pressed or rolled down to take the curvature of the handle. This, I believe, is the ordinary practice.

X Q. 25. That being the fact, as stated in your last answer, viz., that the straps in both instances are made to conform to the contour of the lower end of the wooden handle, there would be an advantage in having the handle straps of the narrow or ordinary form, as shown in "Complainant's Exhibit Ordinary Handle Straps above the Socket," as shown in "Complainant's Exhibit Myers"?

A. As I understand the subject-matter in controversy, there is no limitation as to length of the socket or of the length of the narrow portions or extensions of the handle straps. If we extend the socket beyond the bend in the handle (which is clearly within the wording of the Myers claim), then the fact of narrowing the straps would be of not the least advantage except for the saving of the metal,
125 which is immaterial. If, now, we suppose the socket to extend below the bend of the handle, such as, for instance, such as is shown in "Complainant's Exhibit Myers," then if we consider the straps as made wider above the socket, as here stated, there will be slightly more power required to bend the wide straps at the covered place in the handle; but this is practically immaterial with the present perfected machinery. The wide strap, such as shown in the Barnes patent, forming a complete socket, would be much the stronger of the two constructions.

X Q. 26. Are you aware of the fact that it is the common practice in making shovels to force a mandrel into the socket portion of the shovel and between the straps and then make the socket and straps conform to the contour of the mandrel, which mandrel conforms to the contour of the lower end of the wooden handle?

A. I am aware that mandrels are used as substantially set out in the question to give the general shape to the socket part of the blade and straps, and then, after the handle is driven in, the straps are pressed down tightly upon the wooden handle and made to conform exactly thereto.

X Q. 27. I now show you a scoop which shows a greater curvature in the handle than in any of the exhibits that you have testified about. Please state what, in your judgment, is the advantage of curving the handles as shown in the scoop I now show you and the curvature in exhibits Complainant's Exhibit Myers and "Ordinary Handle Straps."

(Complainant's counsel offers scoop above referred to in evidence, and the same is marked "Complainant's Exhibit Myers Scoop.")

(Question objected to as irrelevant and immaterial, there being nothing in the Myers patent to limit it to one form of handle rather than to another.)

126 (Counsel for complainant states that the curvature of the drawing — shown in the Myers patent.)

A. In the scoop the blade is made deep and the socket portion of the straps extends greatly towards a right angle to the bottom of the scoop, and that the scoop may be used in the manner and for the purpose designed it is necessary to throw the handle backward, so that the line of thrust in using the scoop shall be directed through the forward or cutting edge. If this curvature were not given it

would make it a most awkward implement to handle. This curvature also brings the handle into a proper position (when the scoop is upon the ground in working position), that the greatest amount of work can be done by the operator with the least expenditure of muscular power. In regard to the other shovels, which are designed for different purposes, such as for digging dirt, the position of the blade with reference to the ground is different, and it necessitates less curvature in the handle to accomplish the same results which the excessive curvature in the other or scoop accomplished.

X Q. 28. I infer from your last answer that the curvature in the scoop and shovels mentioned in said answer are of a great advantage to said scoop and shovels for relieving the operator from a strained position and from an undue expenditure of muscular force in his manipulation of said scoop and shovels while shoveling. Am I correct in this inference?

(Same objection.)

A. Yes, sir.

X Q. 29. In view of the fact that the handle straps are formed in one piece with the blade in some cases and in other cases riveted to the blade and the socket within the blade and the handle straps above the blade formed around a mandrel corresponding to the contour of the wooden handle that is to be placed between them, would there not be great difficulty in inserting the curved wooden
127 handle in the socket formed within the blade, as shown in the drawings of the Barnes patent?

A. I do not see that we have anything to do with the socket in the blade, and I can find no reference to it in the Myers patent. The difficulty with which a handle could be inserted in a socket between straps, such as shown in the Barnes patent, would depend to a great extent upon the curvature given to the socket straps. It is not necessary to Myers' invention that the handle enter a socket formed in the blade at all.

(Answer objected to and question repeated.)

A. I can give no other answer than that which I have, for even if we suppose for the sake of argument that Myers' patent called for a handle which must enter a socket in the blade (which is not the case) the curvatures of the handle and socket straps would have a great deal to do with case.

X Q. 30. I call your attention particularly to figure 3 of the Barnes patent, in which the wooden handle is represented as entering the curvature of the socket and within the outer line of the blade, upper part, and ask you, in view of the fact that the straps are riveted to the blade prior to the insertion of the lower end of the wooden handle into the said socket, how it is possible to insert it?

A. No handles is shown in the Barnes patent. Figure 3 simply shows a section of the scoop blade with the front and back straps riveted in place. The handle might be placed between the straps and driven into the socket in the blade before the complete curvature or finished condition was given to the straps, or, so far as this

p tent is concerned, the straps might be secured to the handle first and then to the blade, but I fail to see that the finished article has anything to do with the fact of what the curvature might be, or whether the handle extends into the blade or not, as such a construction is not described or claimed in the Myers patent.

128 X Q. 31. The usual practice with those skilled in the art is to rivet the handle straps to the blade when they are made separate from the blade, and whether made separate or in one piece with the blade the socket is formed and the straps bent around a mandrel corresponding with the contour of the handle at its lower end. That being the practice, and universally so, and the wooden handle at its lower end always entering within the socket within the outer line of the blade—assuming that what I have just stated is the practice among shovel-makers, in such case how is it possible to insert the wooden handle in this manner in a socket such as is shown in figure 3 of the Barnes patent?

(Question objected to so far as it purports to be a statement of fact, the facts being, as defendants will prove, quite contrary to the statement made by counsel.)

A. Until the straps are riveted to the handle they would be more or less flexible, and if the curvature of the handle was not ridiculously great it could be driven into the socket and the straps rounded down upon the handle to give it a finished appearance. However, when making socket straps in which the socket extends the full length of the strap I am not aware that it is customary to completely shape the upper ends of said straps on a mandrel, that operation being performed after the handle has been secured in place.

X Q. 32. Look at "Complainant's Exhibit Myers Scoop," and state if the lower end of the wooden handle does not enter the socket within the outer line of the scoop blade.

A. It appears to do so.

X Q. 33. Are you aware that in the making of shovels that all that portion of the handle straps is turned outward towards the face and back of the blade above the portion forming the socket before entering the wooden handle into the socket and the straps?

129 A. I was always under the impression that it was customary with all manufacturers of shovels to leave the upper parts of the straps incompletely shaped and separated until after the introduction of the handle, and have so stated in some of my previous answers when counsel for Myers has stated that "the handle straps above the blade are formed around a mandrel corresponding to the contour of the wooden handle."

X Q. 34. It being the custom or ordinary practice to form the socket portion of the straps above the blades over a mandrel before inserting the wooden handles, what would be the effect of bending back the upper and lower strap for inserting the wooden handle in the Barnes patent, as shown in Fig. 3?

(Objected to as an incorrect statement of fact without warrant in the testimony.)

A. The metal forming the socket in the Barnes' patent, I have before stated, might be bent after the handle is inserted, but if we consider it bent over a mandrel before the insertion of the handle, as stated in the question, it does not follow that the upper strap or either of them should be bent back upon itself to admit of the insertion of the handle, as a simple gradual spreading of the two straps forming the socket would undoubtedly admit the entrance of the handle. I therefore consider that that socket could be bent sufficiently to admit the handle without materially injuring the metal.

X Q. 35. Please examine "Defendants' Exhibit Ames' California Spade" and state if in your judgment the handle straps are of the ordinary construction.

A. I consider them substantially what you might term ordinary handle straps.

X Q. 36. Look at "Defendants' Exhibit Ames' English Spade" and state if, in your judgment, the handle straps are of the ordinary construction.

130 A. The handle straps above the socket are of the ordinary construction.

X Q. 37. Please state what is the essential difference between "Defendants' Exhibit Ames' California Spade" and "Ames' English Spade" in relation to the straps and socket for the wooden handle.

A. In the California spade straps are riveted to the blade and extend up upon the handle, and for a distance above the blade the straps are bent around the handle to make a union or substantial union, and thereby form a socket for the handle. In this case the two straps are separate and distinct.

In the case of the English spade the straps are formed integral with the socket part, and this socket part is formed of flat metal bent around the lower end of the handle to make a union and for the socket.

In both spades we have the two ordinary handle straps terminating in a socket for the reception of the handle.

X Q. 38. Look at "Defendants' Exhibit Ames' Baltimore Shovel" and state if in your judgment it is provided with the ordinary handle straps and socket for the wooden handle independent of the material of which the handle straps are constructed.

A. The handle straps of this spade are shaped like what we may term ordinary handle straps, though in this instance they are made of malleable casting and the front and back strap are riveted together and to the upper part of blade, the edges of said straps at a point above the blade meeting to make a union and form a socket into which the lower end of the handle extends.

X Q. 39. Please examine "Defendants' Exhibit Cunningham's Patent and also Myers' Patent" and state what in your judgment is the difference of the construction of the two inventions therein described.

A. Both constructions are for shovels. In both we have a
131 handle secured to ordinary handle straps terminating in a socket for the reception of the lower end of the handle. In both cases we also have the blade riveted or firmly secured to the

socket and straps. Generically or practically the constructions are substantially the same. The Myers patent has the socket formed by the two straps near the blade meeting to make a union substantially as shown in the Barnes patent and in the numerous exhibits forming parts of this record, while in the case of the Cunningham patent the socket is made solid without the union, substantially as shown in the Smith patent, hereinbefore referred to.

In addition to the above similarities and differences it might be remarked that the shovel-blade in the Cunningham device is capable of being removed for repairs or replacing of the old blade by simply knocking out a rivet.

Redirect examination by FRANCIS T. CHAMBERS, Esq., counsel for respondents:

R. D. Q. 40. You were asked in reference to the "Exhibit Smith Patent" whether it showed a socket in the blade of the shovel. Is there anything in the Myers patent which limits the combination claimed therein to a structure in which the handle is provided with a double socket partly formed in the blade and partly formed by the straps?

A. No, sir: the Myers patent is for the attachment of the handle to the straps and a socket formed by a union of those straps above the blade of the shovel and has nothing to do with the socket in the blade. In fact there is no description of any socket within the blade in the Myers patent.

R. D. Q. 41. You were asked as to your opinion of the relative advantage of straps like the Barnes patent and straps like the Myers patent. Now state, without regard to the mode of securing the handle in the straps, which, in your opinion, would give the most strength and solidity to the handle.

132 A. The Barnes construction by all means, as the handle in that construction would not only be supported against lateral movement at the bottom, but would be supported against such lateral pressure throughout the whole length of the strap.

R. D. Q. 42. A number of questions were asked you in relation to the curvature of scoop and shovel handles. Is there anything in the Myers patent which indicates that the inventor intended to confine his invention to curved handles, or even that he considered it especially useful in connection with handles of considerable curvature?

A. Nothing whatever.

R. X Q. 43. In the drawings of the Myers patent, which he states formed part of this specification, a curved wooden handle and curved handle straps is shown. Is that true?

A. Yes, sir.

R. X Q. 44. The specification of Myers' patent states, "A socket for the reception of the end of the handle is formed." Is that so?

A. It says that, but in connection with it it describes that the socket is formed on the handle straps, and does not refer to a socket within the blade.

R. X Q. 45. A socket within the blade is shown in the drawings, is there not?

A. No section of a socket within the blade is shown, but the part of the straps where they are riveted to the blade are shaped to form a hollow space, into which the rear edge of the shovel blade projects. There is nothing in the patent to show that the handle extends below the socket formed by the union of the straps.

R. M. HUNTER.

Sworn and subscribed to before me this 29th day of April, A. D. 1886.

SAMUEL BELL,
Special Examiner.

Adjourned to meet Friday, April 30, 1886, at 10.30 o'clock a. m.

133 FRIDAY, *April* 30, 1886.

Met pursuant to adjournment.

Present same counsel as before.

LINFORD ROWLAND, a witness produced on behalf of defendant, being duly affirmed, deposes and says as follows:

(It is hereby agreed and stipulated by complainant's counsel that Mr. Linford Rowland may be examined as to his knowledge, use, and manufacture of spades or shovels alleged to anticipate the invention patented in letters patent No. 208,258, of September 24, 1878, in places other than the city of Philadelphia, without objection and with the same effect as though said places had been fully set out in the answer.)

Q. 1. Please state your name, age, residence, and occupation.

A. Linford Rowland; 53 years of age; Cheltenham, Montgomery Co.; manufacturer of shovels.

Q. 2. How long have — been engaged in the manufacture of shovels?

A. Twenty-four years.

Q. 3. I hand you "Defendants' Exhibit Ames' Baltimore Shovel." Please state whether you ever saw shovels constructed and put together in the same manner as this shovel, prior to 1877; and, if so, where, when, and under what circumstances you first saw such shovels.

A. I seen a shovel prior to 1877 just like "Defendants' Exhibit Ames' Baltimore Shovel." I was at the factory and saw them making them. To the best of my recollection, it was at Birmingham, Massachusetts; this was over twenty-five years ago.

Q. 4. Have you seen such shovels in other places than the manufactory where they were made; if so, when and where?

134 A. I seen them in Baltimore, New York, and out in our own office at Cheltenham, Montgomery Co., Pennsylvania. It was about fifteen years ago. I saw them in Baltimore and New York in the hardware stores.

Q. 5. Have you ever made any shovels of this kind; and, if so, when did you make them first?

A. We have made them, and made them over ten years ago. We only made one or two of them, only to try them.

Cross-examination waived by J. J. Johnson, Esq., counsel for complainant.

LYNFORD ROWLAND.

Sworn and subscribed to before me this 30th day of April, A. D. 1886.

SAM'L BELL,
Special Examiner.

(It is hereby stipulated and agreed by counsel that the translations of the text of the following "defendants' exhibits, viz., Forster's Allgemeine Bauzeitung and Forster's Allgemeine Bauzeitung No. 2 and French Encyclopedia," which are now produced by defendant's counsel, are true and accurate, and the same are offered in evidence and marked respectively "Defendants' Exhibits Translations Forster, Forster No. 2, and Encyclopedia.")

SAM'L BELL, *Sp. Ex'r.*

135 United States Circuit Court, Western District of Pennsylvania.

MYERS
vs.
THE GROOM SHOVEL COMPANY.

It is hereby stipulated and agreed by and between the counsel in the above-entitled cause that any notary public or other officer qualified to administer oaths may act as special examiner in taking of depositions in behalf of defendants, and depositions may be taken before such examiner at any time and place within the United States, provided the complainant is notified as to such time and place six days in advance of the time set.

GEORGE SHIRAS, JR.,
JAMES J. JOHNSTON,
Counsel for Plaintiff.

136 United States Circuit Court, Western District of Pennsylvania.

MYERS
vs.
THE GROOM SHOVEL COMPANY. } No. 3. November Term, 1884.

It is hereby stipulated and agreed by and between counsel in the above case that the defendants shall have until April 1st, 1886, to take their testimony, and all testimony taken before that date may be filed and constitute a part of the record in said case, and that

said testimony may be taken before any notary public or other officer competent to administer an oath.

GEORGE SHIRAS, JR.,
Pl'ff's Counsel.

March 6th, 1886.

Defendants' time for taking depositions is hereby further extended till Monday, May 10th, 1886.

JAMES J. JOHNSTON,
Counsel for Pl'ff.

Philadelphia, April 26, 1886.

137 EXHIBIT COPY OF LICENSE.

Whereas Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, did, on and before the 30th of March, 1878, invent a new and useful improvement in handle socket for shovels and spades, for which improvement he did, on or about 20th day of April, make application for letters patent of the United States, and on or about the 22d day of July, 1878, did, by deed of assignment, assign and transfer all his right, title, and interest in and to said improvement unto his wife, Ella D. Myers, which deed of assignment is duly recorded in the United States Patent Office, in Liber D 23, page 196, of the Transfers of Patents; and whereas letters patent were granted to the said Henry M. Myers for the aforesaid improvement, which letters patent, pursuant to law in such case provided, were, on the 24th of September, 1878, issued to said Ella D. Myers, her heirs or assigns; and whereas J. C. Birge, E. K. Holton, C. E. Bell, P. W. Groom, of St. Louis, in the county of St. Louis and State of Missouri, and doing business in said St. Louis under the firm name of Groom Shovel Co., being desirous of acquiring a license to manufacture under said letters patent shovels, spades, and scoops containing said improvement: Now, therefore, this agreement, made this —, between the said Ella D. Myers, party of the first part, and Groom Shovel Co., party of the second part, have agreed as follows:

1st. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the hereinafter named —, at their factory, in St. Louis, in the State of Missouri,
138 and in no other place or places, to the end of the term for which said letters patent were granted, shovels, spades, and scoops containing the patented improvement, and to sell the same within the United States.

2nd. The party of the second part agrees to make full and true returns to the party of the first part under oath of one member of the firm and under oath of the book-keeper conversant with the sales upon the first day of October, January, April, and July of each year of all shovels, spades, and scoops of any grade or brand containing the patented improvement manufactured by them.

3rd. The party of the second part agrees to pay to the party of

the first part as a license fee twenty-five cents for each and every dozen of shovels, spades, and scoops manufactured by the said party of the second part containing the patented improvement: Provided, that if the said fee be not paid upon the days provided herein for quarterly returns or within ten days thereafter the party of the first part may terminate this license by serving a written notice upon the party of the second part, but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

4th. The said party of the second part, for and in consideration of the grant of this license, agrees not to sell any shovels, spades, or scoops containing the said patented improvement for less than the list price and discount of H. M. Myers & Co., Limited, of
139 Beaver Falls, Pennsylvania, for shovels, spades, and scoops of similar grades containing said patented improvement as said list and discount is now established and as the same may hereafter from time to time be modified and changed by said firm; and it is provided that should the party of the second part sell shovels, spades, or scoops containing said patented improvement for less than the price-list and discount of the said H. M. Myers & Co., Limited, for similar grades of shovels, spades, and scoops containing said patented improvement the party of the first part may terminate this license by serving a written notice upon the party of the second part, but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of said notice.

In witness whereof the party above named have hereunto set their hands the day and year first above written.

ELLA D. MYERS.
GROOM SHOVEL CO.
C. E. BELL, *Sec'y.*

140 EXHIBIT ASSIGNMENT No. 1.

Whereas I, Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, have invented certain new and useful improvements in handles for scoops, shovels, and spades, for which I have made application for letters patent of the United States;

And whereas Ella D. Myers, of the same place, *being* desirous of acquiring an interest therein:

Now, this indenture witnesseth: That, for and in consideration of the sum of five dollars to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby sell and set over, unto the said Ella D. Myers all right, title, and interest which I have in said invention as described in the specification which I have prepared and executed preparatory to the obtaining of letters patent therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters to Ella

D. Myers for the sole use and behoof of the said Ella D. Myers and her legal representatives.

In testimony whereof I hereunto set my hand and affix my seal this 22d day of July, 1878.

H. M. MYERS. [SEAL.]

Sealed and delivered in presence of—
JAMES J. JOHNSTON.
ALEX. S. H. JOHNSTON.

141 Received for record July 24, 1878, and recorded in Liber D 23, page 196, of Transfers of Patents.

[SEAL.] In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

W. H. DOOLITTLE,
Acting Commissioner.

142 EXHIBIT ASSIGNMENT NO. 2.

Whereas Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, did invent a certain new and useful improvement in handle sockets for shovels, spades, and scoops, for which letters patent of the United States were issued to Ella D. Myers, of said town, county, and State, which letters patent bear date September 24th, 1878, and numbered 208,258;

And whereas the said Henry M. Myers is desirous of acquiring an interest therein:

Now, therefore, to all whom it may concern be it known that, for and in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Ella D. Myers, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Henry M. Myers the whole right, title, and interest in and to the said improvement in handle sockets for shovels, spades, and scoops and in and to the letters patent therefore aforesaid, the same to be held and enjoyed by the said Henry M. Myers for his own use and behoof and for the use and behoof of his legal representatives to the full end of the term for which said letters patent are or may be granted as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

143 In testimony whereof I have hereunto set my hand and affixed my seal, at Beaver Falls, in the county of Beaver and State of Pennsylvania, this 25 day of March, A. D. 1881.

ELLA D. MYERS.

In presence of—
THOMAS W. WRIGHT.
S. Y. CALVIN.

Received for record April 11, 1881, and recorded in Liber T 26, page 31, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.]

E. M. MARBLE,
Commissioner.

144 EXHIBIT ASSIGNMENT No. 3.

Whereas Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, did invent a certain new and useful improvement in handle sockets for shovels, spades, and scoops, for which letters patent of the United States were issued to Ella D. Myers, of said town, county, and State, which letters patent bear date September 24, 1878, and numbered 208,258;

And whereas the said Ella D. Myers did, on or about the 11 day of March, A. D. 1881, sell, assign, and transfer to the said Henry M. Myers the whole right, title, and interest in and to the said improvement and letters patent;

And whereas the said Ella D. Myers is desirous of acquiring a certain interest in and to the said improvement and letters patent:

Now, therefore, to all whom it may concern be it known that, for and in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Henry M. Myers, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Ella D. Myers the whole right, title, and interest in and to the said improvement in handle sockets for shovels, spades, and scoops and in and to the letters patent aforesaid, the same to be held and enjoyed by the said Ella D. Myers for her own use and behoof during her lifetime, and

145 in the event of her death the profits and increase that have accrued from the said improvement and letters patent that may be in her possession at the time of her decease shall be equally divided between Charles H. Myers, Collie Myers, Annie Amanda Myers, and Julia Lida Myers, children of the said Henry M. Myers, and the children that may be born to the said Henry M. and Ella D. Myers, so that said children shall share alike in said profits and increase and share in like manner in any profits and increase that may accrue from the said improvement and letters patent after the decease of the said Ella D. Myers for and during the term for which said letters patent are or may be granted as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Beaver Falls, in the county of Beaver and State of Pennsylvania, this 30th day of March, A. D. 1881.

HENRY M. MYERS.

In presence of—
THOMAS W. WRIGHT.
S. Y. CALVIN.

Received for record May 13, 1881, and recorded in Liber R 26, page 232, of Transfers of Patents.

Henry M. Myers
vs
The Groom Shore Company

Circuit Court United States
Eastern Dist. of Penna.
No 3. November T. 1887

Defendants Exhibit
Hunters drawing of spade 295
of Morton's cyclopedia of agriculture

Samuel Reed
Special Examiner

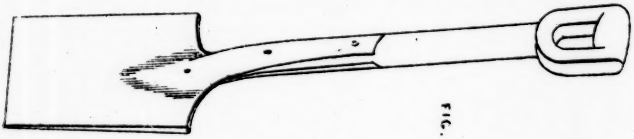
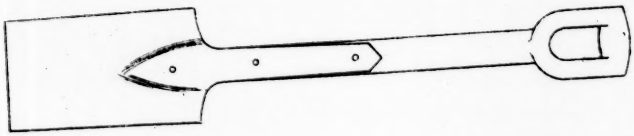


FIG. 295

No. 393
Myers
vs
Groom
Shorlle
p. 147



Henry M. Myers
vs
The Groom Shovel Company

Circuit Court United States
Western Dist. of Penna
No. 3. November T. 1884

Defendants Exhibit.
Similar drawing of spade Fig 288
of Workers Cyclopedia of agriculture
Samuel S. Page
special Examiner.

No. 39
Myers
v.
Groom
Shovels
p. 146

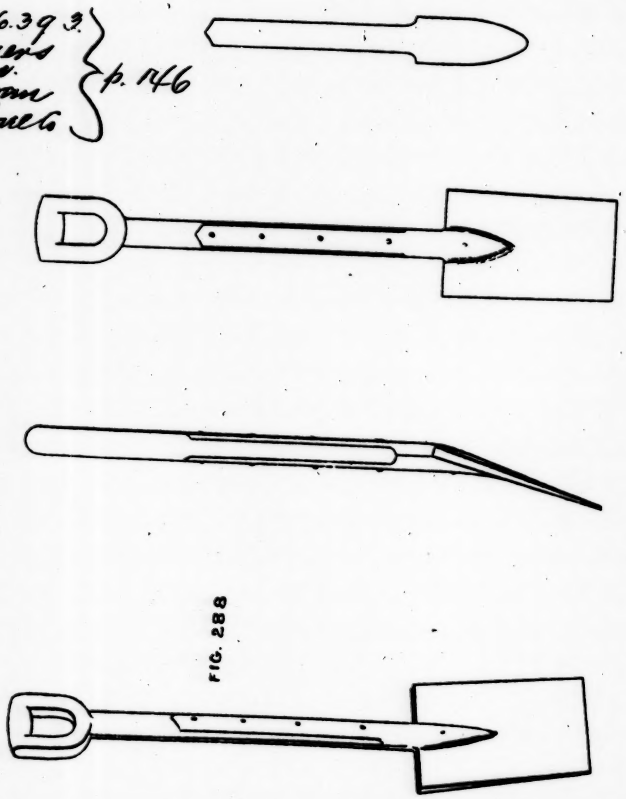


FIG. 288

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] E. M. MARBLE,
Commissioner.

(Here follow diagrams marked pp. 146 & 147.)

148 HENRY M. MYERS vs. THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit C't U. S. No. 3. Nov. Sess., 1884.

"DEFENDANTS' EXHIBIT MORTON'S ENCYCLOPEDIA." Samuel Bell, Special Examiner.

Covered drains.—We now come to the consideration of the more important description of drainage—the removal of water by means of covered drains; and here, in the first place, we shall describe the simple tools used in land draining.

The tools used in the formation of drains are few in number and of a very simple description. They consist of a set of spades—generally three, of different sizes—gradually diminishing in width, to suit the different parts of drains, Figs. 288–290. For soils free from stones these spades work better when curved, as in Fig. 292; but for all lands in which there are many imbedded stones the flat form is preferable. For taking out the last narrow spit to form the seat for the draining pipe long, narrow spades are used, called bottoming tools, Figs. 290–292. There are also scoops of various widths, furnished with long handles, and rounded or flattened in the soles, Figs. 296–299,
301, according as they are required to finish the bottom of the
149 drain for the reception of stones, a horse-shoe tile and sole, or a draining pipe. In the formation of large and deep drains a shovel, very much bent at the neck or having a great "lift," as it is termed, Fig. 293, is very useful for finishing the bottom. Where the subsoil is stony or indurated a hand pick, Fig. 303, or foot pick, Fig. 304, is required to loosen it before it can be shoveled out. For the purpose of laying pipes in narrow and deep drains an instrument called a pipe-layer, Fig. 309, has been invented and is indispensable, for the narrowness of the drains prevents a man from standing in them, nor, indeed, is he able to reach the bottom with his hand without much trouble, while with the assistance of the pipe-layer he does not require to go into the drain at all and can proceed with great expedition.

The following cuts, Figs. 288–304, represent such a set of tools as has been described. They should be made of the best materials. The sockets of the spades should be continued in the form of two iron straps to vary near the cross of the handle so as to give the required strength for pressing out stones or other obstructions in the course of the work.

In addition to the tools, named a drain gauge is a necessary instrument. Different sizes of these are required for the different widths and depths of drains. They should be firmly made and in-

capable of being altered, as it is by no means an uncommon trick of workman to take off the bottom piece and shorten the stalk an inch or two and then replace it. In draining with stones the gauge should show the width and depth of the stones, as well as the depth of the drain, Fig. 305. For tile or pipe drains the depth alone is sufficient, Fig. 306.

150 HENRY M. MYERS *vs.* THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit Ct. U. S.

"DEFENDANTS' EXHIBIT HUBBARD'S PATENT." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Charles W. Hubbard October 21, 1879, No. 220,760, for improvement in shovels.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

151 No. 220,760.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come:

Whereas Charles W. Hubbard, of Pittsburgh, Pennsylvania, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in shovels, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Charles W. Hubbard, his heirs or assigns, for the term of seventeen years from the 21st day of October, one thousand eight hundred and seventy-nine, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

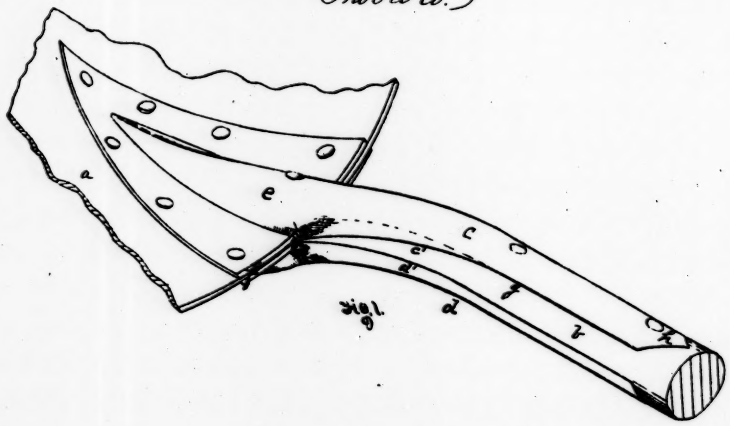
In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this 21st day of October, in the year of our Lord one thousand eight

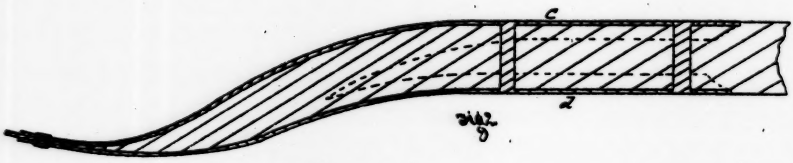
C. W. HUBBARD.

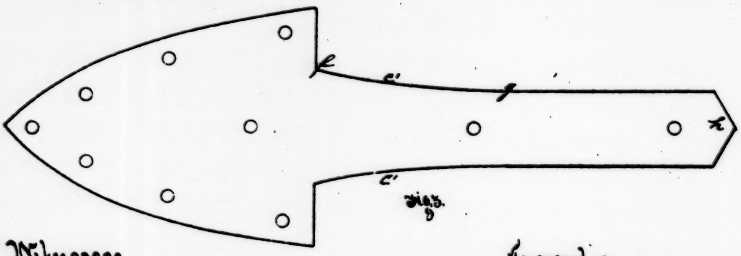
Shovel.

No. 220,760. Patented Oct. 21, 1879.

No. 393
Myers
v.
Groom
Shovel Co.
p. 152







Witnesses.
John F. Smith
James W. Friend

Inventor.
Charles W. Hubbard
by Baldwin Hopkins & Peyton
Attorneys

hundred and seventy-nine, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] C. SCHURZ,
Secretary of the Interior.

Countersigned:
H. E. PAINE,
Commissioner of Patents.

153 UNITED STATES PATENT OFFICE.

CHARLES W. HUBBARD, of Pittsburgh, Pennsylvania.

Improvement in Shovels.

Specification forming part of Letters Patent No. 220,760, dated October 21, 1879; application filed September 15, 1879.

To all whom it may concern:

Be it known that I, Charles W. Hubbard, of Pittsburgh, in the county of Allegheny and State of Pennsylvania, have invented a new and useful improvement in shovels, and I do hereby declare the following to be a full, clear, and exact description thereof, reference being had to the accompanying drawings, forming part of this specification, in which—

(Here follows diagram marked p. 152.)

Figure 1 is a perspective view of my improved shovel, and Fig. 2 is a top view. Fig. 3 is a sectional view of the same.

Like letters of reference indicate like parts.

My invention consists in forming the straps of the shovel of sufficient width to meet at their edges at the shoulder, and of a regular gradual taper back over the bend to the straight part of the handle, and either tapered or straight from that point to their ends.

Heretofore handles have been attached by a socket in the blade and by straps which ran back from the socket, one on the upper and one on the lower side of the handle; but their edges did not meet, and they had either square or rounded corners at their union with the blade. Handles have also been attached by means of a tubular socket and fastened by straps running from the socket, one
154 on the upper and one on the under side, the said straps having widely separated parallel edges throughout their length, and leaving a square or rounding edge at the sides of their union with the socket.

The objection to the first form mentioned is that it was not as strong as is always desirable, the sides of the handle not being supported, and the square or rounded edges of the socket forming an edge over which the handle was liable to be bent and broken.

The objection to the second form was that it also possessed the breaking edges above the tubular part of the socket; that, owing to the bend of the handle, making the surface covered by the upper strap longer than the lower one, the strap could not be cut out and fitted

uniformly on the handle, and that, as the handles were not of uniform size, it was difficult, if not impossible, to lay down and fit the straps to them with any degree of nicety or perfection of finish without a cost which would virtually exclude the shovel from the market.

The purpose of my invention is to obviate these difficulties and to produce a shovel which is very strong at the point where the handle is united to the blade, which has no breaking edge over which the handle may be broken, which strengthens the handle in the knee or bend, which is easily and cheaply fitted to the handle whatever be the variation in the size of handles, which may be handsomely finished, and in which the leverage of the handle is distributed along the strap so as to avoid an undue strain at any one point.

To enable others skilled in the art to make and use my invention, I will describe its construction by reference to the drawings.

The blade of the shovel is shown at *a*, the socket at *e*, the straps at *c* and *d*, and the wooden handle at *b*.

The straps *c d* are cut of a slightly curved uniform taper from
155 the shoulder *f* to the point *g*, which is at the limit of or beyond the bend of the handle *b*, and then they run either straight or tapering from that point to the end *h*. When laid down on the handle the edges *c' d'* begin to diverge at the shoulder *f*, and from that point to the point *g* separate by a gradual uniform divergence.

It will be noticed that the straps present no lateral edge to the handle. Hence there is no breaking edge, while on the other hand the handle is substantially surrounded and strengthened from the blade to a point beyond the bend.

As the edges of the straps do not meet and as the straps are entirely independent of each other, they can be laid down on the handle with the same facility as the old narrow strap.

The curvature of the taper enables me to lay the strap down on the handle with more facility and greater smoothness than a straight taper, owing to the fact that it is bent around the rounding face of the handle, and for this reason I prefer to make the taper slightly curved.

The tapering strap distributes the leverage of the handle along the whole strap and makes it proportionately strong at all points.

This shovel can be finished neatly at a very small cost and has a handsome and workmanlike appearance.

What I claim as my invention and desire to secure by letters patent is—

In a shovel or similar implement having a blade or scoop, a socket, and a bent handle, the straps formed to meet at the shoulders and from that point tapering regularly to the straight part of the handle, substantially as and for the purpose specified.

In testimony whereof I, the said Charles W. Hubbard, have hereunto set my hand this 6th day of September, 1879.

CHARLES W. HUBBARD.

Witnesses:
JAMES H. PORTE.
T. B. KERR.

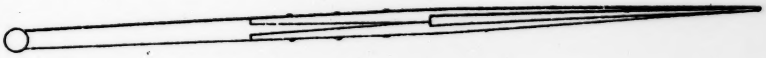
(Here follows diagram marked p. 156.)

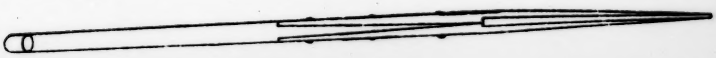
No. 393.
Myers
v.
Groom
Shovel Co.
} p. 156

Henry M. Myers
vs
The Groom Shovel Company
} Circuit Court United States
Eastern Dist of Penna
No. 3. November T. 1884

Defendants Exhibit
Hewlins side view of spades
shown in Defendants Exhibit
Fosters allgemeine Baugeitung

Thomas Ewbank
Special Examiner





No. 393.
Myers
Groom
Shovels
p. 158

Allgemeinen Bauzeitung_1853.

Blatt 560.

Fig. 11. Fig. 12.

157 HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit Ct. U. S. No. 3. Nov. T., 1884.

"DEFENDANTS' EXHIBIT FORSTER'S ALLGEMEINE BAUZEITUNG."
Samuel Beli, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom the presents shall come, Greeting:

This is to certify that the annexed is a true copy from the bound volumes of this office of an extract and drawing from Förster's Allgemeine Bauzeitung, Wien, 1853, page 147, lines 18 to 24, inclusive; drawing from plate 560.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 13th day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

Extract from Förster's Allgemeine Bauzeitung, Wien, 1853, *Page* 147, *Lines* 18 *to* 24, *Inclusive.*

159 Die Instrumente, deren man sich zur Ausgrabung der Einschnitte selbst bedient, sind von ausserordentlicher Einfachheit wie, Fig. 11, 14 zeigen; es sind eiserne Grabscheite, die gutverstählt und mit festen mit starken Krücken versehenen Stielen ausgestatet sind, damit sie sich recht leicht handhaben lassen.

Ex'd: A. R.

Extract from Förster's Allgemeine Bauzeitung, Vienna, 1853, *Page* 147, *Lines* 18 *to* 24, *Inclusive.*

The instruments or tools used in making excavations are remarkably simple in construction. Figs. 11–14 show iron spades which are well case-hardened and provided with firm and strong handles, so as to be handled with ease.

(Here follows diagram marked p. 158.)

HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } Circuit Court of U. S., Western Dist. Penna. No. 4. Nov. T., 1884.

"DEFENDANTS' EXHIBIT BARNES' PATENT." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR.
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Elmore A. Barnes January 23d, 1877, No. 186,529, for improvement in scoops.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 31st day of March, in the year of our Lord one thousand eight
160 hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

No. 186,529.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come:

Whereas Elmore A. Barnes, of Pittsburg, Pennsylvania, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in scoops, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Elmore A. Barnes, his heirs or assigns, for the term of seventeen years from the twenty-third day of January, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

[SEAL.] CHAS. T. GORHAM,
Acting Secretary of the Interior.

Countersigned:
W. H. DOOLITTLE,
Acting Commissioner of Patents.

No. 393.
Myers
Groom
Shovel Co.
p. 161

E. A. BARNES.

SCOOP.

No. 186,520. Patented Jan. 23, 1877.

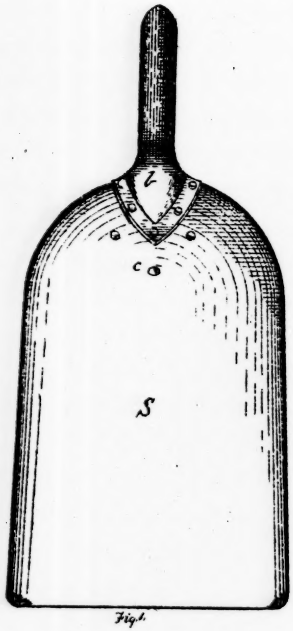


Fig. 1.

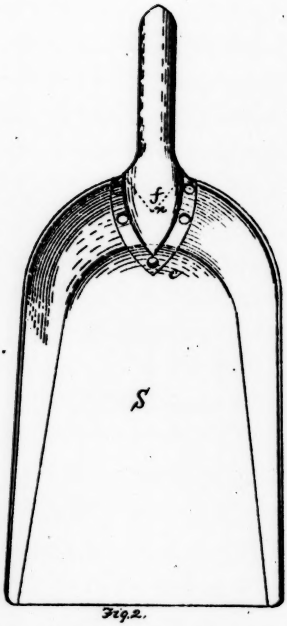


Fig. 2.

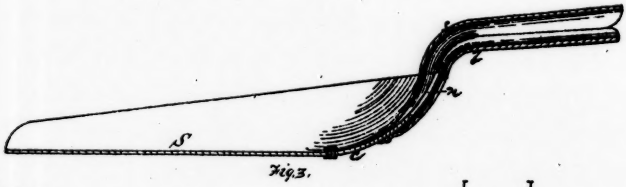


Fig. 3.

Witnesses.
James E. Kay
R. O. Sweetland

Inventor
Elmore A. Barnes.
by Bakewell & Kerr.
Attys.

162 UNITED STATES PATENT OFFICE.

ELMORE A. BARNES, of Pittsburgh, Pennsylvania.

Improvement in Scoops.

Specification forming part of Letters Patent No. 186,520, dated January 23, 1877; application filed May 1, 1876.

To all whom it may concern:

Be it known that I, Elmore A. Barnes, of Pittsburgh, in the county of Allegheny and State of Pennsylvania, have invented a new and useful improvement in scoops; and I do hereby declare the following to be a full, clear, and exact description thereof, reference being had to the accompanying drawing, forming part of this specification, in which—

(Here follows diagram marked p. 161.)

Figure 1 is a view of a scoop embodying my improvements and showing the manner of riveting the back strap. Fig. 2 is a view of the scoop showing the front strap, and Fig. 3 is a sectional view of the strap.

Like letters refer to like parts wherever they occur.

My invention relates to the manufacture of scoops.

Heretofore, in the manufacture of scoops, the sheet was first trimmed to the required size and form. A V-shaped piece was then cut out at a point corresponding to the attachment of the straps and the blank then pressed or swaged into form, after which the straps were secured by rivets along the line of the V-shaped section. In order to properly brace the blade the points of the straps were
163 extended below the curve and were consequently in the line of wear, so that when the rivet which secured the points of the straps wore out or gave way the point of the back strap was liable to curl up or break off, and the second set of rivets, being close to the edge of the V-shaped slot, were liable to tear out and thus often rendering the scoop useless before it was but half worn out.

The object of the present invention is to so modify the manner of attaching the straps as to obviate the objections specified.

I will now proceed to describe my invention, so that others skilled in the art to which it appertains may apply the same.

In the drawing, S indicates a scoop, having the straps *b* and *f* riveted thereto. In forming this scoop I first trim or cut the sheet to the required size. I next notch it slightly, as shown in dotted line at *n*, and then submit the blank to the press or dies and set it into shape, taking care that the curve *c* is well in advance of the notch *n* and the surplus metal is toward the back strap. The notch *n* need not be cut in the blank unless desired, but, if it is not, then the die should be raised at that point to swage the metal out of the

line of the socket. When the blank, either with or without notch *n*, has been pressed or swaged up by the dies, I next proceed to rivet the straps thereto, first securing the back strap *b* (which should be short) so that the point shall be on the curve fully back of the line of wear. After the back strap is partially riveted the front strap may be riveted at the point, and the upper rivets may be made to pass through both straps. The front strap is preferably long enough to extend well down on the scoop to complete the socket, and may be secured at its point by a rivet in the usual manner. Should the rivet of the front strap be located forward of the curve and in the line of wear, it will be immaterial, as the point of the strap being
164 on the front of the scoop, it will be protected and not liable to be curled up or broken off, and should the head of the rivet wear off a new rivet can be readily inserted to secure the point of the front strap.

It will be seen that the advantages of this mode of securing the straps are that the attachment of the back strap is made out of the line of wear and therefore cannot become loose, and the metal being retained on the line of the second, and, if desired, on the line of all the rivets, there is no liability of the scoop breaking across from the loosening of the front strap.

Having thus described my invention, what I claim and desire by letters patent is—

A scoop having front and back straps forming a socket for the handle, the back strap of a separate piece from the body or bowl of the scoop, said back strap being riveted on the curve of the bowl and back of the line of wear, substantially as and for the purpose specified.

In testimony whereof I, the said Elmore A. Barnes, have hereunto set my hand.

ELMORE A. BARNES.

Witnesses:
C. C. HUSSY.
JAMES I. KAY.

165 HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit C't U. S. No. 3. Nov. T. 1884.

"DEFENDANTS' EXHIBIT CUNNINGHAM PATENT." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Thomas Weiss February 23, 1875, No. 160,170, for improvement in shovels.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 31st

day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

166 No. 160,170.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come:

Whereas Peter B. Cunningham, of Freehold, Pennsylvania, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in shovels (he having assigned his right, title, and interest in said improvement to Thomas Weiss, of Bethlehem, Pennsylvania), a description of which invention is contained in the specification, of which copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such case made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Thomas Weiss, his heirs or assigns, for the term of seventeen years from the 23d day of February, one thousand eight hundred and seventy-five, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this 23d day of February, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

[SEAL.] B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
J. M. THACHER,
Commissioner of Patents.

167 UNITED STATES PATENT OFFICE.

PETER B. CUNNINGHAM, of Freehold, assignor to Thomas Weiss, of Bethlehem, Pennsylvania.

Improvement in Shovels.

Specification forming part of Letters Patent No. 160,170, dated February 23, 1875; application filed February 6, 1875.

To all whom it may concern:

Be it known that I, Peter B. Cunningham, of Freehold, Luzerne county and State of Pennsylvania, have invented an improvement in shovels, of which the following is a specification:

The object of my invention is to facilitate the repairing of shovels by adapting a metal tongue, A, on the handle B of the shovel to a socket, *a*, formed in the blade D, and securing it therein by a bolt or rivet, as shown in the perspective view, Fig. 1, of the accompanying drawing, the withdrawing of this pin permitting the ready furnishing of the blade with a new handle or the old handle with a new blade.

(Here follows diagram marked p. 168.)

The tongue A is forged in one piece with straps *d d* and a socket, *e*, which are fitted over the end of the wooden handle B of the shovel and permanently secured to the same by rivets or otherwise, as shown in Fig. 1 and in the longitudinal section, Fig. 2. A shoulder, *f*, is formed on the tongue for fitting snugly against the rear edge of the blade, when the said tongue is fitted into the socket,
169 and the blade and handle are secured together by a transverse pin, *h*, or by a rivet or bolt adapted to holes *b* and *b'* in the tongue and blade, as clearly shown in the transverse section, Fig. 3.

In ordinary shovels and spades the handle is secured to the blade so that it cannot be disconnected therefrom. In foundries especially, where the handles frequently become burnt, numbers of shovels having good blades are discarded owing to this difficulty of attaching new handles.

By my invention this objection is entirely overcome, the connection between the handle and the blade being perfectly rigid while the shovel is in use, and yet permitting the ready disconnection of the blade from the handle after simply knocking out the pin *h*, either handle or blade being replaced by a new one without loss of time.

Another advantage of my invention is the economizing of space in packing the blades and handles separately for transportation in large quantities.

I claim as my invention—

A shovel in which are combined a metal tongue, A, secured to the handle with a socket, *a*, formed for its reception in the blade, as set forth.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

PETER B. CUNNINGHAM.

Witnesses:

SAM. BRUNNER.
JESSE WEAVER.

P. B. CUNNINGHAM. 168

Shovel.

No. 160,170. Patented Feb. 23, 1875

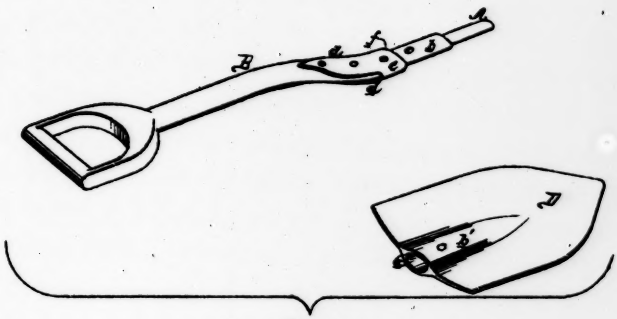


FIG. 1.

FIG. 2.

No. 393 Myers v. Groove Shovel Co. p. 168.

FIG. 3.

Witnesses,

Thomas McIlvain

Hubert Howson

P. B. Cunningham

by his Attys

Howson and Sons

170 HENRY M. MYERS vs. THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit Ct. U. S. No. 3. Nov. Sess., 1884.

"DEFENDANTS' EXHIBIT SMITH PATENT." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Dolphin G. Smith April 18, 1871, No. 113,805, for improvement in ferrules.

In testimony whereof I, M. V. Montgomery, Commissioner of, Patents, have caused the seal of the Patent Office to be affixed this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

M. V. MONTGOMERY,
Commissioner.

171 No. 113,805.

THE UNITED STATES OF AMERICA:

To all to whom these letters patent may come:

Whereas Dolphin G. Smith, of Columbus, Ohio, has alleged that he has invented a new and useful improvement of ferrules, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discoverer of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are, therefore, to grant to the said Dolphin G. Smith, his executors, administrators, or assigns, for the term of seventeen years from the eighteenth day of April, one thousand eight hundred and seventy-one, the full and exclusive right and liberty of making, using, and vending to others to be used the said improvement, a description whereof is given in the annexed schedule and made a part of these presents.

In testimony whereof I have caused these letters to be made patent and the seal of the Patent Office to be hereunto affixed.

Given under my hand, at the city of Washington, this eighteenth day of April, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

[SEAL.]

C. D. DELANO,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

M. D. LEGGETT,
Commissioner of Patents.

172 UNITED STATES PATENT OFFICE.

DOLPHIN G. SMITH, of Columbus, Ohio.

Improvement in Ferrules.

Specification forming part of Letters Patent No. 113,805, dated April 18, 1871.

To all whom it may concern:

Be it known that I, Dolphin G. Smith, of Columbus, in the county of Franklin and State of Ohio, have invented a new and improved ferrule; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification.

This invention relates to improvements in ferrules for spades, forks, and other implements, but more especially such ferrules as have notches in the ends for receiving the shoulders of a fork or spade or other article having shoulders.

The invention consists in the application to the said ferrules of a re-enforcing ring, of oval, flat, or other form, fitted onto the tapered end, driven on tight, and secured by soldering, brazing, or it may be retained by the friction and by the shoulders of the tool driven into the wood handle and confined by the ring and ferrule, the said ring being driven on at the same time the shank of the tool is driven into the handle. The said re-enforcing ring adds
174 strength to the ferrule in the part subject to the greatest strain and particularly liable to be split, while it enables me to make the ferrule thinner and lighter than it otherwise would have to be, so that I may employ less metal both for the ring and ferrule than is needed for the ferrule alone when the ring is not used.

(Here follows diagram marked p. 173.)

Figures 1 and 2 are side views of a ferrule for a spade strengthened by a ring according to my improvement, and Fig. 3 is an end view of the same.

Similar letters of reference indicate corresponding parts.

A is the ferrule as commonly made, and B is a ring applied for strengthening it according to my improvement. C represents the wood handle inserted in the large end, which has straps, D, extending along the handle for riveting to it.

Having thus described my invention, I claim as new and desire to secure by letters patent—

The ferrule A, combined with a ring, B, applied to the end thereof, as and for the purpose specified.

DOLPHIN G. SMITH.

Witnesses:

W. H. HERSHISER.

WM. S. PHARES.

D. G. Smith,

Ferrule.

No. 113,805. Patented Apr. 18. 1871.

Fig. 1.

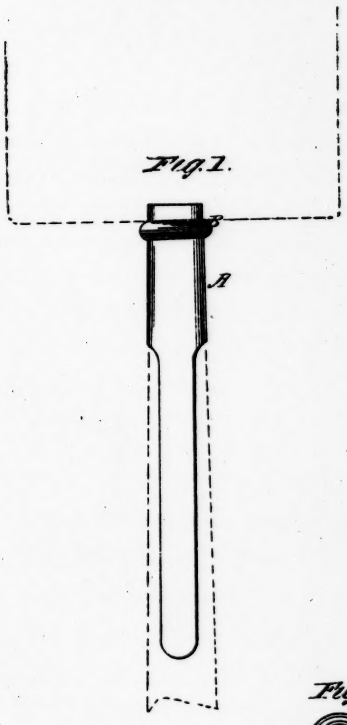


Fig. 2.

Fig. 3

No. 393 Myers v. Grover Shovel Co. } p. 173

Witnesses:
John Decker.
Wm. H. C. Smith.

Inventor:
D. G. Smith
per Munn & Co.
Attorneys.

175 HENRY M. MYERS } West. Dist. of Penna., Circuit Ct. U. S. No. 3. Nov. Sess., 1884.
vs.
THE GROOM SHOVEL COMPANY. }

"DEFENDANTS' EXHIBIT FRENCH ENCYCLOPEDIA." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the bound volumes of this office of an extract and drawing from Encyclopedie Pratique de L'Agriculture, by Firmin Didot Frères, Fils et Cie, Paris, 1860, volume III, page 374, lines 19–27, inclusive.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 13th day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

177 *Extract from Encyclopedie Pratique de L'Agriculture by Firmin Didot Frères, Fils et Cie., Paris,* 1860. *Vol. III, Page* 374, *Lines* 19–27, *Inclusive.*

Bêche-louchet (fig. 14 et 115).—Le manche est à manette et large dans le bas; il est enfoncé entre les deux feuillets de la larne, ouverte seulement au milieu de sa largeur; les deux prolongements de la lame embrassent le manche et y sont assemblés par deux rivets. Elle ese un peu plus concave et plus courbée longitudinalement que les précédentes. Elle sert à labourer en terres moyennes.

Longueur de la lame			0^m, 351
Largeur	"	" en haut	Om, 216
Largeur	"	" au trauchant	0^m, 180
Surface	"	"	0^{m2}, 072
Longueur du manche			0^m, 972 à 1^m 130

Ex'd: E. A. M.; H. M. H.

Extract from "Encyclopédie Pratique de L'Agriculture," by Firmin Didot Frères et Fils et Cie., Paris, 1860. *Volume III, Page* 374, *Lines* 19–27, *Inclusive.*

Louchet spade (Figs. 114 and 115).

The handle is provided with an hilt and is wide at its lowest part; it is kept between both sheets of the blade, which are separated only in the middle of its width.

Both exteriors of the blade surround the handle to which they are fastened by means of two rivets.

The blade is a little more concave and longitudinally curved than the foregoing. It is used for ploughing in ordinary soil.

Length of blade		13.82 in.
Width "	at the tops	8.50 in.
" "	at the bottom	7.09 in.
Area of blade		111.60 sq. in.
Length of handle		38.27 to 44.49 in.

(Here follows diagram marked p. 176.)

178 HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit Ct. U. S. No. 3. Nov. Sess., 1884.

"DEFENDANTS' EXHIBIT FORSTER'S ALLGEMEINE BAUZEITUNG No. 2." Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the bound volumes of this office of an extract from Förster's Allgemeine Bauzeitung, Wien, 1864, page 336, lines 30 to 40, inclusive, and drawing of the same.

In testimony whereof I, Robert B. Vance, acting Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 23d day of December, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundredth and tenth.

[SEAL.] ROBERT B. VANCE,
Acting Commissioner.

180 *Extract from Förster's Allgemeine Bauzeitung, Wien, Page* 336, *Lines* 30 *to* 40, *Inclusive.*

Die Eröffnung der Einschnitte muss stets am inedrigsten Theil des Terrains beginnen, so dass man durch Regen odeo bei der Ausführung sich zeigen des Inellwasser in der Arbeit nicht behindert voird. Die Instrumente, welche man zum Graben gebraucht, sind sehr einfach, haben jedoch eine Form, wie sie sich für das Terrain eignet, in dem man sie gebraucht. Fig. 6–10, stellen einige solche Werkzeuge dar; Fig 6, ist ein Spaten zum Ausstechen des Grases; Fig. 7, ein solcher zum Graben der Drainageröhren; Fig. 8, ein Handbagger; Fig. 9, ein Handbohrer; Fig. 10, ist ein Werkzeug zum Legen der Rören.

Ex'd: A. R.

Extract from "Förster's Allgemeine Bauzeitung," Vienna, 1864, *Page* 336, *Lines* 30 *to* 40, *Inclusive.*

The starting of the excavation must be at the lowest point of the soil, so that the work may not become hindered by water or by

Encyclopédie De L'Agriculteur.

Vol. 3. Page 374. Figs. 114 & 115.

No. 393
Myers
"
Groom
Shovel
C.
} p. 176

Fig. 114. Fig. 115.

1864.

No. 393.
Myers
v.
Groom
Short C.
} p. 179

Fig. 6.

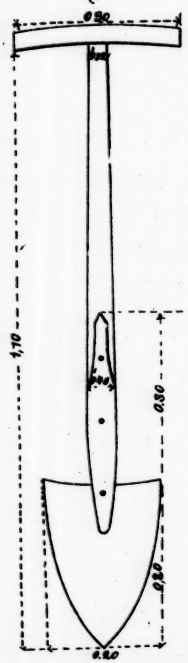


Fig. 7.

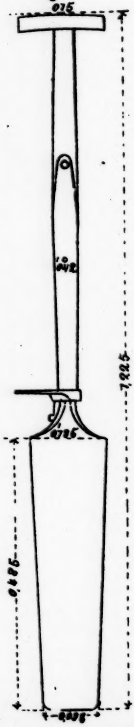
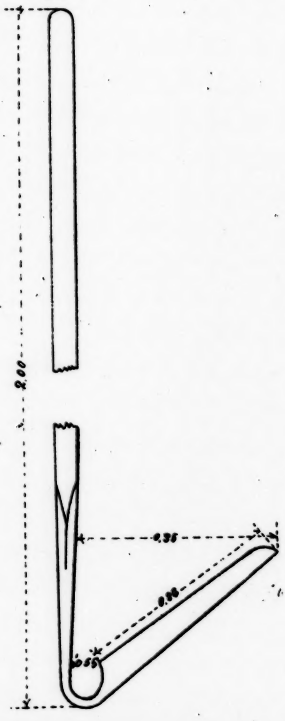


Fig. 8.



springs which may be opened during process of excavation. The tools used in the excavation are extremely simple, but have a form dependent on the nature of the soil in which they are to be used. Figs. 6–10 represent such tools; Fig. 6 represents a spade used for cutting the soil; Fig. 7, a spade used in excavating for drainage pipes; Fig. 8, a hand plow or rake; Fig. 9, an auger; Fig. 10, an instrument for laying the pipes.

(Here follows diagram marked p. 179.)

181 HENRY M. MYERS
vs.
THE GROOM SHOVEL COMPANY. } Western Dist. of Penna., Circuit Ct. U. S. No. 3. Nov. T., 1884.

"DEFENDANTS' EXHIBIT MYERS' FILE WRAPPER AND CONTENTS."
Samuel Bell, Special Examiner.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted Henry M. Myers, assignor to Ella D. Myers, September 24th, 1878, No. 208,258, for improvement in handle sockets for shovels, spades and scoops.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 31st day of March, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

(SEAL.) M. V. MONTGOMERY,
Commissioner.

182 To the Commissioner of Patents:

Your petitioner, Henry M. Myers, of Beaver Falls, in the county of Beaver, in the State of Pennsylvania, prays that a patent may be granted him for improvement in shovels, spades, and scoops set forth in the annexed specification, and he hereby authorizes J. J. Johnston, of Pittsburgh, Pa., Charles G. Page, of Washington, D. C., associate attorney, to act as his attorney in presenting his application and in making all such alterations and amendments as may be required in said matter and to receive the patent when granted.

HENRY M. MYERS.

STATE OF PENNSYLVANIA, }
County of Beaver, Beaver Falls. }

On this 30th day of March, 1878, before the subscriber, a justice of the peace in and for the said city and county, personally appeared the within-named Henry M. Myers and made solemn oath that he believes himself to be the original and first inventor of the within-

described improvement in shovels, spades, and scoops, and that he does not know or believe the same was ever before known or used, and that he is a citizen of the United States and a resident of Beaver Falls, Pa.

[SEAL.] S. C. STEWART, *J. P.*

To all whom it may concern:

Be it known that I, Henry M. Myers, of Beaver Falls, county of Beaver, State of Pennsylvania, have invented a new and useful improvement in shovels, spades, and scoops; and I do hereby de-
183 clare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

My invention relates to an improvement in shovels, spades, and scoops, and consists in the peculiar construction of the handle straps, whereby a socket and straps are combined for attaching the handle to the shovel blade.

To enable others skilled in the art with which my invention is most nearly connected to make and use it, I will proceed to describe its construction and operation. In the accompanying drawings, which form part of my specification, Fig. 1 is a top view of my improvement in shovels, spades, and scoops. Fig. 2 is a side view of the same, representing the blade and straps at line *y* of Fig. 1.

Fig. 3 is a transverse section of the handle straps at line *y* of Fig. 2.

Fig. 4 is a top view or plan of the handle prior to being swaged into form for attaching to the shovel, spade, or scoop blade.

In the drawings A represents a scoop blade, which may be of any of the known forms and constructed of the ordinary material. B represents the handle, which is constructed of wood. C and D represent the handle straps, which are cut (in the form shown in Fig. 4) from sheet iron or sheet steel and furnished with openings for the rivets used for attaching them to the blade A and handle B. The straps C and D are then swaged into the form necessary for the upper and lower strap, as indicated in Figs. 1 and 2, so that the edges *f f* in Fig. 4 meet, as at *g* in Figs. 2 and 3, forming the socket *e* indicated in Fig. 3. The parts *h* and *i* of the straps C and D are then riveted to the blade A. The straps C and D may be forged and "plated" with the blade A. The handle B is then fitted into the socket *e* and the straps riveted to the handle, as shown in Figs. 1
and 2. By constructing handle straps in two pieces of the
184 form shown in Fig. 4 a socket for the reception of the end of the handle is formed, having the advantage of the ordinary handle straps combined with said socket, whereby the handle is greatly strengthened and securely attached to the blade A, and said combined socket and handle straps are constructed with economy of labor and material and with great facility.

* (Having thus described my improvement, what I claim as of my invention is:)

* (Cancelled; "Erase and insert 'B,' May 9, '78," written on margin.)

*(A shovel, spade, or scoop provided with a socket and straps combined and constructed in two pieces for attaching the handle to the blade, substantially as herein described and for the purpose set forth.)

HENRY M. MYERS.

Witnesses:
JAMES J. JOHNSTON.
C. H. MYERS.

Room 116.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *April* 23, 1878.

Henry M. Myers, Chas. G. Page, present.

Shovel, &c. Ap'l 20, '78. No. 75–83 (shovels).

The claim is anticipated by patent to E. A. Barnes, No. 186,520, Jan. 25, '77 (shovels).

A patent is refused.

H. T. FISHER, *Ass't Ex.*

Copy sent.—G.

O. C. FOX, *Ex.*

185 Hon. Comm'r of Patents:

The case of Henry M. Myers for improvement in shovels, etc., filed April 20th, 1878, is amended as follows:

Erase claim and insert—

"A."

"As an improved means of securing handles to shovels the herein-described combined socket and straps, the same being composed of the two straps C D, forming a union at *g* and terminating in the socket *e*, as shown and described."

CHAS. G. PAGE,
Attorney for Henry M. Myers.

Washington, D. C., April 25th, 1878.

Room 116.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., *April* 27, 1878.

Henry M. Myers, Chas. G. Page, present.

Shovel. Apr. 20, '78. No. 75–83 (shovels).

The amended claim does not appear to possess patentable novelty

*(Cancelled; "Erase and insert, April 25, '78, 'A,'" written on margin.)

in view of patents to P. B. Cunningham, No. 160,170, Feb. 23, 1875 (shovels), and D. G. Smith, No. 113,805, Ap'l 18, 1871 (tool handles).

H. T. FISHER, *Ass't Ex.*

Copy sent.—G.

O. C. FOX.

Hon. Comm'r of Patents:

The case of Henry M. Myers, imp't in shovels, filed April 20th, 1878, is amended as follows:

186 Erase clause before claim commencing with "having described my invention," &c., and insert the following disclaimer:

"B."

"I am aware that a continuous socket for shovels has been made in two pieces, and I am also aware that a solid socket has been formed with handle straps, but in contradistinction to such I claim."

CHAS. G. PAGE,
Attorney for Henry M. Myers.

PITTSBURGH, *September 13th*, 1878.

Commissioner of Patents.

SIR: Enclosed please find certificate of deposit No. 3681, final fee in matter of the application for a patent for improvement in socket handle for shovels, for which a patent has been allowed. Please send me the date and number of the patent soon as you can do so and oblige,

Very respectfully, JAMES J. JOHNSTON.

No. 208,258.

Henry M. Myers, ass'or to Ella D. Myers, of same place—of Beaver Falls, county of Beaver, State of Pennsylvania.

Shovels, Spades, and Scoops.

Rec'd April 20, 1878.
Petition, " " "
Affidavit, " " "
Specification, " " "
Drawing, " " "
Model. " " "
Cert. dep., " " "
1. Cash, $15.00, " " "
1. Add'l fee cert., $20.00, Sept. 14, 1878.
" " cash.

187 May 31, 1878. O. C. Fox.
Examined May 14, 1878. O. C. Fox.
2. Issue June 1, 1878. F. A. Seely.
4. Patented Sept. 24, 1878.
Circular, June 1, 1878.

JAMES J. JOHNSTON,
Pittsburgh, Pa.

Associate, Chas. G. Page, present.

1878.

Contents.

Application 1 papers.
1. Rej. Ap'l 23, 1878.
2. Amend't, Ap'l 25, 1878.
3. Rej. Ap'l 27, 1878.
4. Amend't, May 9, 1878.
5.
6. Brief.
7.
8.
9.
10.
11.
12.
13.
14.
15. 55. Harrows and diggers, shovels.
16.
17.
18.

Title: Improvement in handle sockets for shovels, spades, and scoops.

Ex'd: H. M. H.; E. A. M.

189 UNITED STATES PATENT OFFICE.

HENRY M. MYERS, of Beaver Falls, Pennsylvania, assignor to Ella D. Myers, of same place.

Improvement in Handle Sockets for Shovels, Spades, and Scoops.

Specification forming part of Letters Patent No. 208,258, dated September 24, 1878; application filed April 20, 1878.

To all whom it may concern:

Be it known that I, Henry M. Myers, of Beaver Falls, county of Beaver and State of Pennsylvania, have invented a new and useful improvement in shovels, spades, and scoops; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

My invention relates to an improvement in shovels, spades, and scoops, and consists in the peculiar construction of the handle straps, whereby a socket and straps are combined for attaching the handle to the shovel blade.

To enable others skilled in the art with which my invention is most nearly connected to make and use it I will proceed to describe its construction and operation.

190 In the accompanying drawings—

(Here follows diagram marked p. 188.)

which form part of my specification, Fig. 1 is a top view of my improvement in shovels, spades, and scoops. Fig. 2 is a side view of the same, representing the blade and straps at line *y* of Fig. 1. Fig. 3 is a transverse section of the handle straps at line *y'* of Fig. 2. Fig. 4 is a top view or plan of the handle prior to being swaged into form for attaching to the shovel, spade, or scoop blade.

In the drawings A represents a scoop blade, which may be of any of the known forms and constructed of the ordinary material. B represents the handle, which is constructed of wood. C and E represent the handle straps, which are cut (in the form shown in Fig. 4) from sheet iron or sheet steel and furnished with openings for the rivets used for attaching them to the blade A and handle B. The straps C and D are then swaged into the form necessary for the upper and lower strap, as indicated in Figs. 1 and 2, so that the edges *f f* in Fig. 4 meet, as at *g* in Figs. 2 and 3, forming the socket *e* (indicated in Fig. 3). The parts *h* and *i* of the straps C and D are then riveted to the blade A. The straps C and D may be forged and plaited with the blade A. The handle B is then fitted into the socket *e* and the straps riveted to the handle, as shown in Figs. 1 and 2.

By constructing handle straps in two pieces of the form shown in Fig. 2 a socket for the reception of the end of the handle is formed, having the advantage of the ordinary handle straps combined with said socket, whereby the handle is greatly strengthened and securely attached to the blade A, and said combined socket and handle straps are constructed with economy of labor and material and with great facility.

I am aware that a continuous socket for shovels has been made in two pieces, and I am also aware that a solid socket has been formed with handle straps, but, in contradistinction to such—

191 I claim—

As an improved means of securing handles to shovels the herein-described combined socket and straps, the same being composed of the two straps C D, forming a union at *g* and terminating in the socket *e*, as shown and described.

HENRY M. MYERS.

Witnesses:
JAMES J. JOHNSTON.
C. H. MYERS.

H. M. MYERS. 188

Handle-Sockets for Shovels, Spades and Scoops.

No. 208,258. Patented Sept. 24, 1878.

Fig. 1

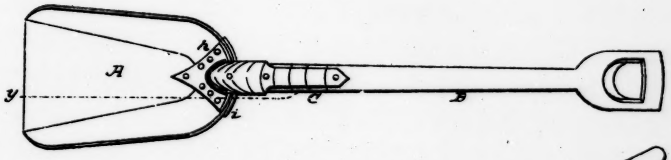
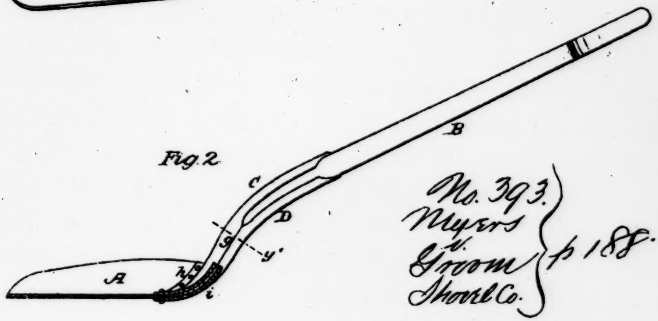


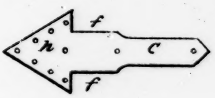
Fig. 2



No. 393. Myers & Groom Shovel Co. p 188.

Fig. 3

Fig. 4



Attest
James Johnston
H. M. Myers.

Inventor.
Henry M. Myers

192 *Opinion.*

Circuit Court of the United States, Western District of Pennsylvania.

HENRY M. MYERS
vs.
GROOM SHOVEL CO. } In Equity.

Per curiam:

This suit is founded on letters patent issued to Henry M. Myers for an improvement in handle sockets for shovels, &c. The patent contains a single claim as follows: "As an improved means of securing handles, the herein-described combined socket and straps, the same being composed of the two straps C^1 D^1 forming a union at *g* and terminating in the socket *e*, as shown and described." The invention as described consists in the construction of the handle straps of a shovel in two pieces and bringing them in juxtaposition on the handle so as to form a socket for the insertion of the handle, thereby, as is claimed, giving it additional strength at the point subject to the greatest strain upon it, and this is the sole distinguishing peculiarity of the described device. In view of the state of the art, if it is within the domain of patentable invention, it is so close to the line as to be fairly disputable whether it may not be assigned to the category of the products of mere mechanical skill; but how-

193 ever this may be we are of opinion that it is not essentially distinguishable in construction from the Ames California spade made more than twenty years ago in considerable numbers for use in the California mines. We regard the latter as a clear anticipation of the patented device and hence the bill must be dismissed with costs.

Filed December 20, 1887.

H. D. GAMBLE, *Clerk.*

194 *Final Decree.*

Circuit Court of the United States, Western District of Pennsylvania.

HENRY M. MYERS
v.
THE GROOM SHOVEL COMPANY and JULIUS C. BIRGE, President; EDWARD K. HOLTON, Secretary, and GEORGE J. KAIME, Treasurer Thereof. } In Equity. No. 3. November Term, 1884.

January 18, 1888—And now, this case having come on to be heard on pleadings and proofs and having been argued by counsel for the plaintiff and defendants and duly considered by the court, it is ordered, adjudged, and decreed that Henry M. Myers named in the bill of complaint was not the true, original, and first inventor of the improvement in handle sockets for shovels, spades, and scoops described and claimed in letters patent No. 208,258, dated September

24, 1878, and the complainant's bill of complaint is therefore dismissed for want of equity.

And it is further ordered and decreed that the defendants recover of the complainant their costs to be taxed.

By the court.

Filed January 18, 1888.

H. D. GAMBLE, *Clerk.*

195 *Appeal.*

In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS
v.
THE GROOM SHOVEL CO. } No. —.

To the hon. the judges of the circuit court of the United States for the western district of Pennsylvania:

The petition of Henry M. Myers respectfully represents—

That on the 10th day of June, 1884, he filed his bill of complaint in the said circuit court of the United States for said district against the said Groom Shovel Company praying for an account and an injunction against said defendant, and that said suit was so proceeded in that on the 18th day of January, 1888, a final decree and judgment was entered against the complainant. Wherefore he prays that an appeal be allowed to the Supreme Court of the United States, and that the decree and judgment entered in said cause may be reversed and such new and other decree be made therein as to said court may seem just.

H. M. MYERS.

Appeal allowed.

M. W. ACHESON, *U. S. Judge.*

Allowed and filed March 2, 1888.

H. D. GAMBLE, *Clerk.*

196 *Bond.*

In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS
v.
GROOM SHOVEL COMPANY. } No. —.

Know all men by these presents that we, Henry M. Myers, of Beaver Falls, Beaver county, Pennsylvania, and Charles H. Myers, of Beaver Falls, Beaver county, State of Pennsylvania, are held and firmly bound unto the Groom Shovel Company and its successor and assigns in the sum of two thousand dollars ($2,000), lawful money of the United States; to which payment, well and truly to be

made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this third day of March, A. D. 1888.

Whereas the above-named Henry M. Myers has appealed to the Supreme Court of the United States from the final decree of the circuit court of the United States in the above-entitled action:

Now, the condition of this obligation is such that if the said Henry M. Myers shall prosecute his said appeal to effect and if he fail to make good his appeal shall answer all damages and costs, then this obligation shall be void; otherwise to be and remain in full force and virtue.

HENRY M. MYERS. [SEAL.]
CHAS. H. MYERS. [SEAL.]

197 Signed, sealed, and delivered in presence of—
J. F. MERRIMAN.

U. S. OF AMERICA, }
West. Dist. of Penna., } *ss:*

Charles H. Myers, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above all just debts and liabilities and property exempt by law from execution.

CHAS. H. MYERS.

Subscribed and sworn to before me this 3d day of March, 1888.

J. F. MERRIMAN,
[SEAL.] *Notary Public.*

And now, March 12, 1888, the within bond approved.
By the court.
Filed March 12, 1888.

H. D. GAMBLE, *Clerk.*

198 UNITED STATES OF AMERICA, }
Western District of Pennsylvania, } *sct:*

To The Groom Shovel Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to an appeal filed in the clerk's office of the United States circuit court, wherein Henry M. Myers is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this twelfth day of April, A. D. 1888.

Seal of the U. S. Circuit Court, W. D. Penna.

M. W. ACHESON,
Judge of U. S. Circuit Court.

Attest: H. D. GAMBLE,
Clerk U. S. Cir. C't.

Service acknowledged May 8, 1888.

FRANCIS T. CHAMBERS,
Att'y for Defendants.

[Endorsed:] No. —. — term, 18—. Henry M. Myers *vs.* Groom Shovel Co. Citation. Filed Ap'l 12, 1888.

199 In the Circuit Court of the United States for the Western District of Pennsylvania.

HENRY M. MYERS
vs.
GROOM SHOVEL CO. *et al.* } No. 3. Nov'r Term, 1884.

WESTERN DISTRICT OF PENNYSLVANIA, *ss:*

Seal of the U. S. Circuit Court, W. D. Penna.

I, H. D. Gamble, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed and foregoing pages contain a true copy of the record and proceedings in the above-entitled case, so full and entire as the same remains of record and on file in my office.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at Pittsburgh, this 17th day of May, A. D. 1888.

H. D. GAMBLE, *Clerk.*

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

I, M. W. Acheson, a judge presiding in the United States circuit court for said district, do hereby certify that H. D. Gamble above named was at the time of making the above certificate and is now clerk of the said court, and that the said certificate made by him is in due form of law.

M. W. ACHESON,
U. S. Judge.

Pittsburgh, May 17th, 1888.

[Endorsed:] No. —. — term, 18—. —— —— *vs.* —— ——.

Endorsed on cover: W. Pennsylvania C. C. U. S. No. 393. Henry M. Myers, appellant, *vs.* The Groom Shovel Company. Filed August 6, 1888.

SUPREME COURT OF THE UNITED STATES.

HENRY M. MYERS, Appellant,
vs.
THE GROOM SHOVEL COMPANY, Appellee.

No. 70. October Term, 1891.

Whereas it appears that one of the exhibits in the above-entitled case, to wit, "Exhibit Assignment No. 4," was placed in evidence on the 14th day of May, 1885, by the complainant (appellant); that the same was lost or mislaid and was not included in the transcript of the record made by the clerk of the circuit court in and for the western district of Pennsylvania as the same was filed in the office of the clerk of the Supreme Court of the United States in the above-entitled appeal, and that the same has been found and restored to the record since the making of said transcript:

Now, therefore, it is hereby stipulated and agreed by and between the counsel of the respective parties, appellant and appellee, in the above-entitled case that the clerk of said circuit court of the United States for the western district of Pennsylvania shall and may make a copy of the said heretofore missing exhibit as the same is now on file in the records of the case, a copy of which is hereunto attached, and transmit the same to the clerk of the Supreme Court of the United States, to be added to and for the purpose of completing the record of said case in said appeal, with like effect as if the same had been included in the transcript of the record as heretofore made and filed in said Supreme Court.

W. BAKEWELL,
Counsel for Appellant.
FRANCIS T. CHAMBERS,
Counsel for Appellee.

(2–175*b*.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Ella D. Myers April 19, 1884, and recorded in Liber E 31, page 285. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof I, W. E. Simonds, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 15th day of September, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

Seal Patent Office, United States of America.

W. E. SIMONDS,
Commissioner.

Assignment.

Liber E 31, page 285.

Whereas Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, did invent a certain new and useful improvement in handle sockets for shovels, spades, and scoops, for which improvement letters patent of the United States were issued to Ella D. Myers, of said town, county, and State, which letters patent bear date September 24th 1878, and numbered 208,258; which letters patent were, on or about the 25th day of March, 1881, assigned by the said Ella D. Myers to the said Henry M. Myers, which assignment was duly recorded in the United States Patent Office April 11th, 1881, in Liber T 26, page 31, of Transfers of Patents, which letters patent *was*, on or about the 30th day of March, 1881, assigned by the said Henry M. Myers to the said Ella D. Myers, which assignment was duly recorded May 13th, 1881, in the United States Patent Office, in Liber R 26, page 232, of Transfers of Patents;

And whereas the said Henry M. Myers is desirous of acquiring an interest therein:

Now, therefore, to all whom it may concern be it known that, for and in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Ella D. Myers, have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said Henry M. Myers the whole right, title, and interest in and to the said improvement in handle sockets for shovels, spades, and scoops and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said Henry M. Myers for his own use and behoof and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Beaver Falls, in the county of Beaver and State of Pennsylvania, this 19th day of April, A. D. 1884.

ELLA D. MYERS.

In presence of—
C. H. MYERS.
S. Y. CALIM.

Recorded July 9, 1884.

J. F. F.
A. J. J.

[Endorsed:] 19375, D., '91.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, } *ss:*

Seal of the U. S. Circuit Court, W. D. Penna.

I, H. D. Gamble, clerk of the circuit court of the United States for said district, do hereby certify that the writing hereto annexed is a transcript of the original thereof on file and remaining of record in my office in the cause therein mentioned.

Witness my hand and the seal of said court, at Pittsburgh, in said district, this fifth day of October, A. D. 1891.

H. D. GAMBLE, *Clerk.*

EXHIBIT ASSIGNMENT No. 4. A. C. Johnston, Examiner.

HENRY M. MYERS
v.
GROOM SHOVEL CO.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Ella D. Myers April 19, 1884, and recorded in Liber E 31, page 285. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof I, Benton J. Hall, Commissioner of Patents, have caused the seal of the Patent Office to be affixed [SEAL.] this 28th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

BENTON J. HALL,
Commissioner.

Assignment.

Liber E 31, p. 285.

Whereas Henry M. Myers, of Beaver Falls, in the county of Beaver and State of Pennsylvania, did invent a certain new and useful improvement in handle sockets for shovels, spades, and scoops, for which improvement letters patent of the United States were issued to Ella D. Myers, of said town, county, and State, which letters patent bear date September 24, 1878, and numbered 208,258; which letters patent were, on or about the 25th day of March, 1881, assigned by the said Ella D. Myers to the said Henry M. Myers, which assignment was duly recorded in the United States Patent Office April 11th, 1881, in Liber T 26, page 31, of Transfers of Patents, which letters patent *was*, on or about the 30th day of March, 1881, assigned by the said Henry M. Myers to the said Ella D. Myers, which assignment was duly recorded May 13th, 1881, in the United States Patent Office, in Liber R 26, page 232, of Transfers of Patents;

And whereas the said Henry M. Myers is desirous of acquiring an interest therein:

Now, therefore, to all whom it may concern be it known that, for and in consideration of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Ella D. Myers, have sold, assigned, and transferred, and by these presents do sell, assign,

and transfer, unto the said Henry M. Myers the whole right, title, and interest in and to the said improvement in handle sockets for shovels, spades, and scoops and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said Henry M. Myers for his own use and behoof and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal, at Beaver Falls, in the county of Beaver and State of Pennsylvania, this 19th day of April, A. D. 1884.

ELLA D. MYERS.

In presence of—
C. H. MYERS.
S. Y. CALIM.

Recorded July 9th, 1884.

Filed Sept. 25, 1891.

H. D. GAMBLE, *Clerk.*

[Endorsed:] Supreme Court U. S., Oct'r term, 1891. No. 70. Henry M. Myers, app't, *vs.* The Groom Shovel Company. Stipulation and adcition to record.

Stamped: Office Supreme Court U. S. Filed Oct. 7, 1891. James H. McKenney, clerk.

Office Supreme Court
FILED
OCT 17
JAMES H. MCK

IN THE

Supreme Court of the United States.

No. 70, October Term, 1891.

Henry M. Myers, Appellant,
VERSUS
The Groom Shovel Company, and Julius C. Birge, President; Edward K. Holton, Secretary; and Geo. I. Harnie, Treasurer.
} Appeal in Equity.

On Appeal from the U. S. Circuit Court for the Western District of Pennsylvania.

BRIEF FOR APPELLANT.

W. BAKEWELL,
For Appellant.

FRANKLIN PRINTING OFFICE, 77 DIAMOND STREET, POWER HALL, PITTSBURGH, PA.

IN THE

Supreme Court of the United States.

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On Appeal from the U. S. Circuit Court for the Western District of Pennsylvania.

BRIEF FOR APPELLANT.

STATEMENT.

On the 10th of June, 1884, the appellant brought suit by bill in equity against the defendants for infringement of Letters Patent of the United States, No. 208,258, granted on September 24th, 1878, to Ella D. Myers, assignee of the inventor, Henry M. Myers, for "improvement in handle sockets for shovels, spades and scoops." The bill alleges title in the complainant, Henry M. Myers, (the appellant in this Court) by assignment from the patentee, who is his wife, and after the usual allegations as to the application for grant and issue of the patent and assignment to the appellant, alleges that the defendants have infringed the patent. (Record pages 2–6.) A subpœna having been issued and served, the defendants filed their answer, admitting the

issue of the patent, but denying that Myers was the first inventor, or that the alleged invention was not in public use for more than two years before his application, and that any exclusive rights vested to the said Myers thereunder.

The defendants further allege that they were not informed as to the complainant's title, and, therefore, deny the same, and leave complainant to make proof thereof.

They further "deny that they are *now* making, using or vending said patented improvement," and further deny that they have made, used or sold, or intend to make use or sell said alleged improvement, "within the Western District of Pennsylvania, in violation of said letters patent, or in violation of any rights secured by these complainants in the premises."

They further give the names and residences of several persons alleged to have had prior knowledge and use of the alleged invention, and also set up three prior patents as anticipating the same, viz.:

No. 113,805, to Dolphin G. Smith, April 18, 1871.

No. 186,520, to Elmore A. Barnes, January 23, 1877.

No. 160,170, to Peter B. Cunningham, February 23, 1875.

And by stipulation of counsel, five printed publications were also set up subsequently, viz.:

Martin's Cyclopedia of Agriculture, Ed. 1851.

Forster's Algemaine Bauzeitung, Ed. 1864.

Encyclopedia Practique de l'Agriculteur, Ed. 1861.

Same, Ed. 1860.

Forster's Algemaine Bauzeitung, Ed. 1853.

And lastly, that in view of the prior state of the art, the patent in suit did not describe or claim any lawful subject matter of a patent. (Record pp. 7-9.)

Replication was filed Nov. 22, 1884, and testimony taken by both parties.

On 20th December, 1887, the Court filed an opinion, in pursuance of which a decree was entered, "decreeing that

Henry M. Myers was not the true, original and first inventor of patent sued on: that bill be dismissed, and that defendant recover of complainant their costs to be taxed." (Record p. 2.)

The opinion of the Circuit Court is found on page 103 of the record.

The opinion of the Court cannot be more briefly stated than by quoting it at length, as follows:

PER CURIAM:

This suit is founded on letters patent issued to Henry M. Myers, for an improvement in handle sockets for shovels, &c. The patent contains a single claim as follows: "As an improved means of securing handles, the herein described combined sockets and straps, the same being composed of the two straps forming a union at *g*, and terminating in the socket *e*, as shown and described." The invention as described, consists in the construction of the handle-straps of a shovel in two pieces, and bringing them in juxtaposition on the handle, so as to form a socket for the insertion of the handle, thereby, as is claimed, giving it additonal strength at the point subject to the greatest strain upon it, and this is the sole distinguishing peculiarity of the described device. In view of the state of the art, if it is within the domain of patentable invention, it is so close to the line as to be fairly disputable whether it may not be assigned, to the category of the products of mere mechanical skill; but however this may be, we are of opinion that it is not essentially distinguishable in construction from the Ames California spade, made more than twenty years ago, in considerable numbers, for use in the California mines. We regard the latter as a clear anticipation of the patented device, and hence the bill must be dismissed, with costs.

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An appeal from the decree in this case was taken to this Court.

Errors assigned: The Court below erred

1. In holding that "in view of the state of the art it [the patented device] "if it be within the domain of patentable inventions is so close to the line as to be fairly disputable whether it may not be assigned to the category of the products of mere mechanical skill."

2. In deciding that the patented device is not essentially distinguishable in construction from the Ames California spade, made more than twenty years ago, for use in the California mines, and that therefore said California spade is a clear anticipation of the patented device.

3. In dismissing complainant's bill.

ARGUMENT FOR APPELLANT.

1. As to the patentability of the invention of the patent in suit in view of the prior state of the art.

The appellant's patent is found in the printed record, the specifications on page 102, and the drawing opposite to it.

It is important in the first place to ascertain what is exactly the invention described and claimed in the patent in suit.

Shovels, spades and scoops are well known articles of universal use, differing from each other in the shape of the blade, or operative part of the instrument, and also in the handle by which the blade is operated, according to the different purposes for which they are used, but in all of them the handle should be made as light as possible, consistently with the use to which it is to be put. The point of chief importance in the construction of such arti-

cles is to give sufficient strength at the point of junction of the blade and handle, as it is at that point that such implements usually break or bend: and this for two reasons, first, because in using them, especially for digging, the strain or force applied to move or lift the load is almost entirely at that point: and, second, because that is the point which, in ordinary cases, is structurally the weakest, owing to the abrupt change of shape where the handle terminates and the blade commences. If this change were less abrupt, so that the width of the blade was gradually reduced until it finally came down to that of the ordinary handle, the danger spoken of would be practically obviated, but the spade or shovel would be awkward, unwieldy, and practically impossible to handle.

This is fully illustrated by the state of the art prior to the date of the Myers application. It appears that there were chiefly two modes of attaching the wooden handle to the blade of the spade, scoop or shovel—one was by means of straps attached to or forming part of the blade, and riveted to the handle, and the other by means of a tubular piece, forming a solid socket, riveted to the blade, into the cavity of which the handle was thrust and fastened.

Each of these methods of construction had several modifications in practice, but none of them satisfied the felt want of a shovel or spade, which would wear out before it would break at the handle. The straps were weak, and though sometimes made of thick iron plate would yield at the junction of the strap and blade, permitting the wooden handle to break under the strain of use. The solid socket plan had its particular faults. It was clumsy, hard to construct, and did not permit of the introduction of the wooden handle so far down as the straps did, especially where the handle was a curved one, and it was moreover deficient in strength. The solid socket was sometimes made with straps attached to it, which extended part way up the handle, but even this did not obviate the difficulty.

In this state of the art the appellant, Myers, made his invention, which consisted in attaching the handle to a shovel or similar article by means of two pieces of metal, rivetted to or plated on to the bowl or blade, and of such shape as to form a combined socket and straps when swaged into the proper shape. The triangular piece, *p*., shown in figure 4 of the patent, being attached to the blade, the part *f*. *f*. being wide enough to wrap half round the shovel handle, and the part *c* being narrower so as to form a strap extending up the handle. When the part *f*. *f*. is swaged into the required curved shape, the edges meet, or nearly so, around the handle, depending on the thickness of the wooden handle at that point (which varies somewhat in practice by shrinkage of the wood), and thus sustain and support the handle in a way that no tubular solid socket could do. Moreover, the two socket pieces not being welded or otherwise attached at their edges, permit of their being opened sufficiently to receive the end of the wooden handle, and permit of its being pushed down to the bottom of the socket, while the straps *c*. *c*. not only aid in the attachment of the handle to the blade, but, by preventing the abrupt termination of the socket, obviate the tendency to fracture at that point. These are important points of the invention.

The specification refers to these features thus:

"By constructing handle straps in two pieces of the "form shown in Fig. 4, a socket for the reception of the "end of the handle is formed, having the advantage of the "ordinary handle-straps combined with said socket, whereby "the handle is greatly strengthened and securely attached "to the blade *A*, and said combined socket and handle-"straps are constructed with economy of labor and material, "and with great facility."

The patentee is careful also to distinguish his invention from what was previously known in the art, by a disclaimer, preceding his claim, as follows:

"I am aware that a *continuous* socket for shovels has

"been made in *two pieces*, and I am also aware that a *solid* "*socket* has been formed with handle straps—but in contra- "distinction to such.

"I CLAIM as an improved means of securing handles to "shovels the herein described *combined socket and straps*, the "same being composed of the two straps *C D*, forming a a union at *g* and terminating in the socket *c*, as shown and "described."

Supposing the statement hereinbefore made as to the prior state of the art to be correct, as we shall presently proceed to show that it is, and therefore assuming for the present the novelty of the invention claimed in the patent in suit—we shall briefly enquire whether it is patentable, or whether, as the Circuit Court seems to think, it is so close to the line between invention and mechanical skill as to be of doubtful patentability.

In considering this question, we enter upon one of the most difficult questions of patent law, and we submit that great care should be exercised lest the apparent obviousness of an improvement after it has been suggested, leads us to regard as mechanical skill that which more properly belongs to the higher plane of invention. That which may be obvious enough to an inventor of the highest rank, such as Arkright, or Watt, or Edison, or Westinghouse, not unfrequently calls for the exercise of far more than mechanical skill on the part of the large majority of inventors. We submit, however, that the question is not one of the *degree* of invention displayed in a patented device, but whether there is invention at all. And there is a very marked and readily recognizable distinction between mechanical skill and invention. When in the progress of the mechanical arts any particular improvement is demanded, the inventor, who may or may not possess any degree of mechanical skill, suggests the mechanical means adequate to produce the result, and when this is suggested and explained the mechanical skill of the artizan is called into play to carry it into execution. A very

skillful mechanic may be no inventor, while many very talented inventors are no mechanics. Oftentimes too it occurs that a very slight change in construction or mode of operation of a mechanical device or machine may be very beneficial, supplying a want which has long been experienced, and one of the best tests of patentable novelty is that an improvement has long been wanted, and that others have approached very near to the invention without actually making it. When this is the case the invention is recognized as useful and is generally adopted, and the public reaping the benefit of it are very apt to regard the simplicity of the improvement as proof of want of invention, and do not hesitate to make use of it regardless of the rights of the inventor.

In the first place, the grant of the patent for the improvement described therein raises a strong presumption in favor of the *patentability* as well as the novelty of the invention, and any doubt as to patentability should be resolved in favor of the patent.

The patent was not granted through inadvertence on the part of the Patent Office, as the claim was scrutinized in view of the prior state of the art, the patents of Barnes, of Cunningham and Smith were cited, and the claim which was made in the application for "a shovel, spade or scoop "provided with a socket and straps combined, and construct-"ed in two pieces for attaching the handle to the blade" being too broad, the claim as granted was substituted, and the disclaimer inserted.

The prior patents referred to by the Patent Office, and the prior publications cited by the defendants clearly show that efforts were made by others to overcome the difficulties in the attachment of the handles to the blades of spades, scoops, &c., and they demonstrate the fact that invention had been exercised, and was recognized by the skilled experts in the Patent Office as being necessary, to solve the mechanical problem, while these patents and publications, constituting

the prior state of the art, also show that there was still room for improvement and invention when Myers entered the field.

We have referred to recognition of the value of the invention by other manufacturers as a test of invention. In proof of this, we cite first the fact that these defendants took a license for the manufacture of these improved shovel straps under the patent at a royalty of 25 cents for each dozen of shovels, spades, &c. manufactured by the Groom Shovel Company, and containing the patented improvement. (Record, page 79.) which license was granted about September, 1879. (Record page 11.) This license, it appears by stipulation, (Record p. 16.) became void and ended—and that the defendants never paid any royalty thereon, but continued to manufacture as infringers.

It further appears that the Western Shovel Makers, of which the defendants, as well as many other manufacturers, were members—passed a resolution requiring the complainant's firm, H. M. Myers & Co. to sell the socket strap at an advance in price of five per cent. over the old style of strap, because of the undue advantage which this improved shape gave them in the sale of their shovels. (Record p. 12.)

Charles H. Myers, who sold shovels with the patented improvement for the complainant's firm, testifies to the value of the improvement in the trade. (Record p. 13, q. 6.)

Thomas H. Lane, hardware merchant for forty years in Pittsburg, testifies as to the shovel with this patent strap: "We consider it a very desirable article, and an improve-"ment on the former mode of applying straps to shovels, "believing that it *added strength at the point where the great-"est strength was needed.* In all my experience with shovels "I never saw any of that form, and it was considered a new "idea by both dealers and consumers, and it was a desirable "article, and it has the preference over other shovels." (Record p. 14. q. 7.)

Joseph Lauhner says: "Exhibit Myers" (shovel with the patent strap,) has the "advantage over shovels formerly

"in the trade as to *strength and finish*, and sells better than "the old-fashioned strap." (Record p. 15, q. 7.)

Howell Gano (Record p. 30, q. 6) says that it has the advantage, and strengthens the shovel and handle at the point where most strength is needed. He was in the hardware business forty years.

Jacob W. Gano (Record p. 31, q. 6, 7): Twenty years in hardware. My experience is that it is the most popular shovel of this grade. I think, without a doubt, it is the socket strap for the wooden handle that makes it so.

C. C. Pyle (Record p. 32, q. 8, 9.): It is a very popular shovel, and takes precedence over the ordinary kind of shovels, because *the socket strap makes it stronger where other shovels are weak*, and gives it a better finish and appearance.

Wm. S. Rathbone (Record p. 41, q. 6.): "They are received very favorably, in fact, they are considered by our trade to be the very best shovels in the market, and are superceding the Ames manufacture, which has been considered the very best by many. It is considered one of the best, if not the best, in the market. I have myself sold large lots both to railroads and to the general trade, and, as far as I know, they have given the utmost satisfaction. They meet with ready sale, which is steadily increasing."

The foregoing citations from the testimony are, we submit, sufficient to show that the device covered by the patent in suit was a particularly useful one, which not only improved the appearance of the shovels, spades, etc., to which it was applied, but gave increased strength to the implement where it was weakest; while the universal testimony of the witnesses examined by the complainant was that it was that it was regarded as new by the trade, and met with constantly increasing favor from the public.

I. AS TO THE NOVELTY OF THE MYERS INVENTION.

The decision of the Circuit Court was that the complainant's patented device "is not essentially distinguishable in "construction from the Ames *California Spade*, made more "than twenty years ago."

This is apparently the only device produced by the defendants which the Court held to be an anticipation of the patented device.

This spade has heavy straps, which are rivetted to the blade of the spade at their lower end, and extend upward to within an inch and a half of the bow of the handle. They taper gradually from the blade upward. They do not, however, form a socket, because while they nearly meet around the wooden handle near the blade, they are cut in at that point so as to form a ferrule around the wood, but not a socket on the blade. The width of the straps next to the blade adds nothing to the strength of the spade at the point of junction between the blade and handle, because the part of the strap which is wrapped around the handle is only partially attached to the blade, and is cut in for the purpose of folding around the handle. This cut serves rather to increase the tendency to break at that point instead of adding strength to it as the Myers socket strap does.

This difference is, we submit, very apparent; and that it is an important difference appears from the testimony of Mr. James E. Emerson, the well known saw manufacturer, and one who has had a great deal to do with patents and patented inventions. (Record p. 27, Q. 5.) In reply to a question as to the superiority of the Myers device over the Exhibits Ames California Spade, Ames English spade and Ames Baltimore shovel, he testifies as follows:

"I consider that the manner of attaching the Myers "shovel to the handle superior in point of utility in supply-"ing as it does additional strength at the point where most "required, which is near the first rivet above the spade, and "at the lower part of the wood of the handle where spades

"and spade handles are most likely to be broken by use, and "is *vastly superior to the California spade*, which is very "likely to be broken at the point of junction to the upper part of the spade."

And this is not mere theory, the witness speaks from experience, he says (Record p. 27):

"Some years ago, prior to the grant of Myers' patent, "we were purchasing what is known as coal scoops or shovels "made by Mr. Myers and very similar to defendant's exhibit "California Spade, and they soon broke off at the point of "junction of the handle to the spade. I then complained "to Mr. Myers of their breaking so readily, when he showed "me spades made like Complainant's Exhibit Myers. I at "once fully comprehended the improvement for strength, "and always after purchased my scoops made after this new "pattern, Exhibit Myers, and *do not remember of one ever "breaking of this kind.*"

There is certainly a difference of construction between the Myers socket strap and the California spade strap; this difference is covered by the patent in suit, and this testimony shows that this difference is material to the strength and durability of the spade.

Surely therefore the difference is a patentable one, and we submit that it cannot be that a prior device which differs from the patented device in the very feature which forms the gist of the claim is an anticipation. Whether or no the difference is patentable is another matter—but that we have already considered.

As the only prior device which the Circuit Court held to anticipate the Myers patent was the California spade, it is perhaps unnecessary to refer to the others set up by defendant; we will, however, do so briefly. They are the Ames English spade and the Baltimore shovel.

The former of these devices has a socket extending nearly to the bow of the wooden handle formed of two pieces, which are welded to the blade, and has in fact no

straps above the socket, while the latter (the Baltimore shovel) has two straps but no socket.

Mr. Oakes A. Ames, who introduced these spades and shovels, states that he thinks the "English spade" was made in England and was sent to them a great many years ago to make some like it. "I think *we never made any like it*, but "sent something in the place of it that answered the pur-"pose." (Record, p. 55, q. 10.)

As to the Baltimore shovel he says: "I think it was "made in Baltimore by the Kimball Shovel Company. I "think we have had this shovel from 12 to 15 years." (Record, p. 55, q. 11.)

These two shovels, apparently the only ones of their kind, do not appear to have been in public use in this country at all. So far as the testimony goes they must be regarded as abandoned devices.

It will hardly do to hold a useful invention, to be anticipated, by such evidence as this. But as they were not held by the Circuit Court to anticipate the Myers device, and as their construction is obviously different, we need not give them any further consideration.

THE PATENTS referred to by the defendants next claim our attention. The *Smith* patent, No. 113,805 (Record p. 94), is for a ferrule for spades, forks, etc.

Such ferrules are used not for the purpose of attaching the spade, fork, etc., to the handle, but for surrounding the handle at the shoulder of the blade, which, in such cases, has a tang attached to the blade, which is driven into the handle. The notch in the end of the ferrule prevents the blade from turning on its tang in the handle, and the ring *B* around the ferrule adds strength to prevent the wooden ferrule from splitting. The ferrule is not composed of two separate pieces, for if it were it could not perform its function as a ferrule at all.

Cunningham's patent, 160,170 (Record p. 92), shows an entirely different mode of attaching the blade of the shovel to the wooden handle. A tongue piece enters a cylindrical cavity in the end of the blade of the shovel, and is rivetted thereto. The specification says: "The tongue *A* is forged in one piece with straps *d d*, and a socket *c*."

The Myers socket strap is, and must be made in two pieces, the lower end of each of which is adapted to be rivetted or plated to the shovel blade, and above that is broad enough to be wrapped half-way around the handle, while a strap extends upwards to be riveted to the handle.

The construction is obviously different.

The *Barnes* patent, No. 186,520 (Record p. 89). This is for a mode of attaching the straps to the bowl of a scoop, and has no reference whatever to the shape, length or width of the straps where they are connected with the wooden handle, and there is nothing but the drawing to indicate their shape or relative dimensions. The only thing that can be gathered from the drawing is that the strap pieces are of the same width throughout their length above the bowl of the scoop. If they form a socket then there are no strap pieces, such as are marked *C D* in the patent in suit; and if they are merely straps then they do not have the wide part *f. f.* of the patent in suit to form a socket, and obviously this construction does not meet the terms of the claim of the Myers patent in suit.

The only remaining patent is No. 220,760, to *Charles W. Hubbard*, which was both applied for and granted over a year after the corresponding dates of the Myers patent. It certainly, therefore, cannot in any way either anticipate or limit the patent in suit. It is, however, interesting as containing a good statement of the difficulties attending the attachment of the blades of shovels and spades to the wooden handles so as to make them sufficiently strong at the point of junction of the strap

and blade, and is a good illustration of the advantages of the Myers socket-strap over what had been previously known and used.

In addition to these patents, defendants offered in evidence extracts from certain publications, consisting of

Two figures, Nos. 288 and 295, and extract of letter press from Morton's Cyclopedia of Agriculture.

Two figures, Nos. 11 and 12, and seven lines of letter press from Forster's Allegemine Bauzeitung.

Also an extract, certified by the Patent Office, from the Encyclopedie Practique de l' Agriculture.

For convenience we refer to these as Morton's Cyclopedia, Forster's exhibits, Nos. 1 and 2, and the French Cyclopedia.

We suppose that the certified extract from the French Cyclopedia is admissable as evidence under the provisions of Section No. 892 of the Revised Statues; as to the other exhibits, a stipulation was entered into that the translations from the text of Forster's extract and the French Cyclopedia offered in evidence were true and correct. (Record, p. 78.)

The extract from Morton's Cyclopedia was offered in evidence, "beginning on page 681, Vol. 1, to end of first paragraph on page 682, said paragraph *to be copied and certified by the Examiner;* also the cuts on pages 681 and 682, said cuts *to be reproduced by photography and certified by the Examiner.*

We do not wish to be understood as objecting to this, as it was apparently done by consent of counsel.

But we do object to the drawings between pages 82 and 83 of the Record, because they are not photographs nor copies of photographs of the figures in Morton's Cyclopedia, but fancy sketches of the defendant's witness, Hunter, designed to illustrate *his interpretation* of Figures 288 and 295 of that book. The photographs of the drawings or

copies of such photographs do not appear anywhere in this record.

We also object to the drawing opposite page 86 of the Record, as it is also a fancy sketch of Mr. Hunter, designed to illustrate *his interpretations* of the drawings in Forster's exhibit.

If the photographic copies of the drawings from the books in question were in the record we might be able to compare them with Mr. Hunter's sketches, but as neither the originals nor the copies of the originals are produced, it would be unfair to the complainant to accept Mr. Hunter's fancy sketches in lieu thereof. Moreover, we submit that even if the original drawings were admissible to illustrate the letter press of the books from which they were taken, they could not be received for the purpose of showing anything else, and if the originals need the interpretation of further sketches by the defendant's expert, no better proof is needed that of theinselves and without such explanatory sketches they are insufficient to anticipate the device of the patent in suit.

But even if these Hunter sketches should be considered by the Court, we submit that they do not anticipate the appellant's patent.

As to Morton's Cyclopedia: If we may assume the correctness of the figures, marked fig. 288 and 295 in Hunter's sketches (between pp. 82 and 83 of the Record), they do not contain the device of the Myers patent. There is nothing to show that the straps are made or attached in any different way from what was usual and well-known, namely, by straps welded to or plated out from the blade of the spade, and extended further than usual up the wooden handle.

It is a well established rule that alleged anticipations of patents, by printed publications or prior patents, must be free from doubt, and that the description should be sufficient to enable others without a knowledge of the patented device to construct it from such prior description.

A comparison of the Myers patent with the Hunter sketches will show that even with aid of his additional figures the device of the Morton Cyclopedia is no anticipation.

A good illustration of this mode of attacking a patent by expert evidence is given by the drawings opposite pages 86 and 87 respectively of the Record.

Opposite page 87 we have the Patent Office copy of figures 11 and 12 of Forster's exhibit, and opposite page 86 we have Mr. Hunter's interpretation. The letters press description is as follows: "The instruments and tools used in "making excavations are remarkably simple in construction. "Fig. 11-14 show iron spades which are well case-hardened, "and provided with firm and strong handles, so as to be "handled with ease." There is no statement here as to the mode of attachment of the handles, and no warrant for the Hunter drawing, designed to show by an effort of the imagination that the straps are closed around the handles, and thence taper gradually upwards. Whether or not this was the construction intended nowhere appears, and if it did it would not be the Myers device.

The extract and figure from the French cyclopedia (Record pages 95-96, and drawing on opposite page,) certainly do not show the device of the patent in suit. The description of the drawing is as follows: "The handle is provided with an hilt, and is wide at its lowest part: it is kept between both sides of the blades, which are separated only in the middle of its width. Both exteriors of the blade surround the handle, to which they are fastened by two rivets."

It is not easy to reconcile this description with figures 114 and 115, but it is stated that the handle is broad at the lower end, and is inserted between the sheets of the blade, or into a cavity made for its reception. It is evident we submit that the straps are mere elongations of the blade, and

are not made of two pieces, as are the socket straps of the patent in suit.

The last of these alleged anticipations is the Forster Exhibit, No. 2, Record p. 96, 97: The drawing, fig. 6, 7 and 8, are thus referred to: "The tools used in the excavation are extremely simple, but have a form dependent on the nature of the soil in which they are to be used. Figs. 6-10 represent such tools. Fig. 6 represents a spade used for cutting the soil; fig. 7 a spade used in excavating for drainage pipes; fig. 8 a hand-plow or rake; fig. 9 an auger; fig. 10 an instrument for laying the pipes."

There is here no description of the construction of the parts, and no suggestion as to the manner in which the tools are fastened to their handles.

It is worthy of remark that the dissimilarity between these various alleged anticipations is such that they cannot any of them be held to anticipate the patent in suit, nor indeed any patent which does not claim broadly the attachment of a handle to a spade.

INFRINGEMENT.

It is scarcely necessary to discuss this question in the present case, for although infringement is charged in the bill, it is really not denied in the answer, and there is no evidence, expert or otherwise, offered by the defendants which contradicts the charge and proof of infringement.

The answer is very cautiously drawn on this point, and doubtless came as near to denying infringement as the defendants dared to do under oath, or the facts would permit. We quote the clauses relative to infringement in full:

"IV. And these defendants, further answering, deny "that they are *now* making, using or vending the said "patented improvement, or a *handle*, in some parts thereof "substantially the same in construction and operation as in

"said patent mentioned, and the exclusive right and privil-
"ege to make, use and vend which is, by law, vested in these
"complainants."

The denial, it will be noticed, is carefully limited by the word *now* to the time of filing the answer, and refers to a *handle*, whereas the patented improvement is not specifically on a handle.

But the answer continues:

"And these defendants further answering deny that
"they have made, used or sold, or that they intend still to
"continue to make, use and sell the said improvement
"*within the Western District of Pennsylvania*, in violation
"of said letters patent, or of any rights secured to these
"complainants in the premises."

It may have been the case, as the defendants' factory was situate in St. Louis, that they had not made, sold or used complainant's device within the Western District of Pennsylvania, but that is no denial of infringement.

This being so, we submit that the only issues raised by the pleadings were the novelty and patentability of the invention covered by the patent.

A mere reference to the testimony bearing on the question of infringement will therefore suffice.

It appears that the defendant company about September, 1879, took a license from Mrs. Henry M. Myers, then owner of the patent in suit (Record, pp. 11 and 79)—that said license "became void and ended," and no license fees were paid on it; that in 1879 they purchased from the complainant's concern 10 dozen pairs of these socket straps. (Exhibit Statement Rec., p. 18.)

In 1881 they purchased 637 dozen.

In 1883 they purchased 586 dozen.

In 1884 they purchased none.

At that time they commenced infringing and putting down the price of the goods to compete with the complainant. (See C. H. Myers' testimony, Record, p. 13, q. 8.)

That the shovels, scoops and spades manufactured by the Groom Shovel Company and sold by them in competition with the complainant's company were substantially the same as the shovels, scoops and spades made under Exhibit Patent (the patent in dispute. Record, p. 13, q. 9.) and that in May, 1884, the witness, C. H. Myers, met Mr. Holton (secretary of the defendant company) at a store in Dubuque, where he (Holton) was showing his samples of scoops, shovels and spades, substantially the same as described in Exhibit Patent, to Mr. Schreiber, the buyer, "who (the witness says) remarked to me that it looked very much like our socket strap." (Q. 10 Record, p. 14.)

J. Cantwell, a St. Louis wholesale hardware merchant, states (Rec. p. 39, q. 10) that the Groom Manufacturing Company manufactured shovels like "Exhibit Infringement," and that he purchased them from the Groom Company—he thinks they commenced in July, 1883, about the 1st January, to apply the patent strap to shovels, is satisfied that it was before July, 1884. (Rec. p. 40, q. 13.)

James E. Emerson (the saw manufacturer) testifies that "Exhibit Myers" (one of complainant's shovels with the patented socket strap) is constructed in accordance with the patent in suit (Record p. 27, q. 6), and that Exhibits "Infringement" are substantially the same as Exhibit Myers, excepting that the straps in Exhibit "Infringement" "are not cut in exactly the same shape at the two sides of the handle." (× 28.)

James Denning, (Record p. 238), an employee of the defendant company, states that the Groom Shovel Company were making shovels such as "Exhibit Infringement," but he is not sure when they commenced.

Edward K. Holton, the Secretary of the Groom Company, states that he is familiar with the shovel manufactured by H. M. Myers & Co., known as the socket-handle strap shovel and spade (Record p. 49, Q. 16,) that the substantial difference between the Groove shovel, of St.

Louis, [misprint for Groom shovel, see Q. 13.] and the Myers' shovel, is that each strap is about an eighth of an inch narrower than the shovel shown, and the straps run perfectly parallel, and do not taper as the St. Louis Company Exhibit.

The Groom Company was also called the St. Louis Shovel Company. (see Record, p. 38, Q. 3.)

We do not suppose, however, that the defendant will attempt to deny the fact of actual infringement.

There can, we submit, be no question as to the great utility of the patented device; at any rate it does not lie in the mouth of the appellees to dispute it, inasmuch as they used it. They knew of the existence of the patent in suit, for they took a license under it: they recognized the value of the improvement by purchasing large quantities of the socket straps from the patentee—and when they commenced to manufacture these socket straps instead of continuing to purchase from the patentee, they tried to escape liability for infringement by making a trifling change in the width of the strap, which did not avoid the infringement of the claim.

In such a case, it seems hardly fair to the inventor to allow a rival manufacturer to defend on the ground of want of patentability. The whole record of the case shows that manufacturers and patentees have been seeking, and the public have been demanding an improvement which would make shovels and spades more durable, without increasing the weight or cost of manufacture. The large sales made by Myers as soon as he introduced his invention bear witness to his success. The result was beneficial, and had never before been as fully attained, and as Mr. Justice Bradley, speaking for this Court says in *Loom Co. vs. Higgins*, 105 U. S. 580, "it may be laid down as a general rule, though perhaps "not an invariable one, that if a new combination and ar- "rangement of known elements produce a new and beneficial "result never attained before, it is evidence of invention."

It may be said that the change made by Myers over what was done before was a little thing, but if it made the shovels more perfect, it was a useful thing; if no one had before done exactly what he did, it was a new thing; and if so many inventors had been aiming without success at the accomplishment of the end which he attained, it required invention.

In the case of *Miller Manufacturing Co. vs. Du Brul*, 12 Official Gazette, 351, Mr. Justice Swayne, after speaking of the question of patentability as to which he had had some doubts, but resolves them in favor of the patent, says:

"Why should not others let his alleged invention alone? "They can use anything that preceded it—the old German "mold—any of those covered by the Du Brul patents. They "can use anything in relation to which evidence has been "given, and which anticipated the alleged invention of the "complainant. Now, if his was so worthless or wanting in "originality, or immaterial, as it is claimed, why should they "not let it alone?" And why, we may add, did not any of these prior devices alleged to anticipate Myers' invention ever come into use.

We submit that the invention in the present case is useful, novel, patentable, and was infringed, and that this appeal should be sustained, and the decree of the Circuit Court reversed.

W. BAKEWELL & SONS.
For Appellant.

W. BAKEWELL.
Of Counsel.

Office Supreme Court U. S.
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CLERK.

No. 70. October Term, 1891.

Supreme Court of the United States.

HENRY M. MYERS,
Appellant,

vs.

THE GROOM SHOVEL COMPANY.

BRIEF FOR APPELLEES.

FRANCIS T. CHAMBERS,
Counsel for Appellees.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

Henry M. Myers, Appellant,

vs.

The Groom Shovel Company et al., *Appellees.*

October Term, 1891.

No. 70.

STATEMENT OF CASE.

This is a suit in equity brought by the the appellant, Myers, for the alleged infringement of a patent granted to him September 24th, 1879, No. 208,258, for an improved handle socket for shovels, spades, and scoops. The defendants are a corporation, and the officers of that corporation who are engaged in making shovels in St. Louis, Mo.

The defenses set up in the answer are non-infringement; prior use and sale by a number of parties; anticipation by several prior patents; public use and sale in this country for more than two years before Myers' application for a patent, and the invalidity of the patent because in view of the state of the art the alleged invention covered thereby involved no patentable novelty.

By stipulation it was agreed that a number of printed publications not set out in the answer might be used with the same effect as though duly pleaded as prior publications of the invention covered by the patent. This stipulation will be found on page 52 of the record. And by another stipulation, printed on page 51 of the record, it was agreed that witnesses might be examined within specific dates with the same effect as though their names had been given in the answer as having prior knowledge of the invention.

Depositions having been taken and numerous exhibits offered in evidence the case was brought to hearing on bill,

answer, replication, and proofs. An opinion was rendered by the court, holding the Myers patent to be fully anticipated by the construction of the Ames California spade, and also intimating that the court found in the other evidence offered by the defendant grave reason for impeaching the novelty of the Myers invention.

In accordance with the opinion a decree was made dismissing the bill of complaint, from which decree the appellant appealed to this court.

APPELLEES' POINTS.

I.

I submit in behalf of the appellees that the invention described and claimed in the Myers patent is fully anticipated.

(*a.*) By the prior knowledge, manufacture, sale, and use of the shovel made and sold by O. Ames & Co. prior to the year 1866, a sample of which shovels is in evidence as Defendants' Exhibit, Ames' California Spade; the manufacture and sale of which is proved by the depositions of O. A. Ames, page 53, John Carr, page 56, and Patrick F. Derby, page 57.

(*b.*) By the prior knowledge, manufacture, sale, and use of shovels by the firm of O. Ames & Co. and others, a sample of which is in evidence as Defendants' Exhibit, Ames' Baltimore Shovel; and the prior existence and use of which is proved by the depositions of Ames, Carr, and Derby, and of Rowland, page 77.

(*c.*) By the prior existence in this country and the knowledge had of it of the shovel marked "Defendants' Exhibit, Ames' English Spade. (See the deposition of Ames.)

(*d.*) By the prior manufacture, sale, &c., of shovels by the Groom Shovel Company and others as proved by Holton, record, pages 48 and 49.

(*e.*) By the Barnes patent, No. 189,520, of January 23d, 1887, record, page 88.

(*f.*) By the Cunningham patent, No. 160,170, of February 30th, 1875, record, page 90.

(*g.*) By the Smith patent, No. 113,805, of April 18th, 1871, record, page 93.

(*h.*) By the publication, including the drawings, of Foster's Allgeneine Bauzeitung, published Vienna, 1853. (See Defendants' Exhibit, Foster's Allgeneine Bauzeitung, record, page 87; also drawing facing page 86 of the record, and testimony of Hunter, page 61.)

(*i.*) By the publication in Morton's Cyclopedia of Agriculture, published London, Glasgow, and Edinburg, 1875. (See Defendants' Exhibit, Morton's Cyclopedia, page 83; the photographic copies of the cuts referred to in the exhibit, the cuts preceding page 83, and the testimony of Hunter, pages 62 and 63.)

(*j.*) By a publication in the Encyclopedie Pratique De L'Agriculture, volume 3, published Paris, 1860. (See Defendants' Exhibit, French Encyclopedia, record, page 95.)

(*k.*) By a publication in Foster's Allgeneine Bauzeitung, published Vienna, 1864. (See Defendants' Foster's Allgeneine Bauzeitung No. 2, record, page 96.)

II.

The appellees further submit that the Myers patent is clearly invalid in view of the state of the art shown in the exhibits and testimony above referred to, because even if not technically anticipated it is clearly lacking in patentable novelty in view of the state of the art thus before the court.

III.

The appellees do not infringe.

BRIEF OF ARGUMENT.

The patent on which this suit is brought is printed on pages 101 and 102 of the record. The device described consists of a shovel, scoop, or spade having projecting from its rear edge

two tangs or straps between which the shovel handle is placed, and which are formed so that when they are clamped down upon the handle they will meet along the sides of the handle for some distance behind the back edge of the blade, and then growing narrower, extend along the top and back of the handle for some distance without meeting. The claim of the patent is as follows:—

> "As an improved means of securing handles to shovels, herein-described combined socket and straps, the same being composed of two straps C D forming a union at *g*, and terminating in the socket *e*, as shown and described."

It would seem fairly inferable from the patent that there is to be some actual uniting of the abutting edges of the top and bottom straps to form the socket, and, if so, there is clearly no infringement by the defendants whose straps, so far from forming a *union* with each other, do not, except in rare cases, even actually come in contact.

The file-wrapper and contents of the Myers application on which the patent in suit was granted will be found printed pages 97 to 101 of the record. These papers show that with the exception of the paragraph preceding the claim, the specification of the patent is identical with that originally filed. The original claim, however, read as follows:—

> "A shovel, spade, or scoop provided with a socket and straps combined and constructed in two pieces for attaching the handle to the blade substantially as herein described, and for the purpose set forth."

This claim was rejected on reference to the Barnes patent, for which see record, page 89; and which patent is clearly for exactly the same invention as that described and claimed in the application.

The present claim was then inserted in view of the original one, and soon after was rejected by the Patent Office on reference to the Cunningham and Smith patents, for which see record, page 92 and page 94.

The application was again amended (see page 100) by inserting before the claim the following clause:—

> "I am aware that a continuous socket for shovels has been made in two pieces, and I am also aware that a solid socket has been formed with handle straps, but in contradistinction with such I claim."

After this amendment the application was allowed, and the patent issued.

The Barnes patent (assuming that by the "union" of the straps to form the socket it is not meant an actual union but a close approach to each other) shows precisely the same construction as that illustrated and described in the Myers patent, except in that the straps are shown as meeting on their edges for practically their whole length, and, as is pointed out by the appellees' expert witness, Hunter, this variation simply differs from the Myers construction in being stronger.

The Cunningham and Smith patents show identically the same arrangement of socket and straps as the Myers patent, except in the way of fastening the straps to the shovel blade, which forms no part of the patented invention. The only difference between the devices in these two older patents and the Myers shovel is that they show a socket and straps formed of a single piece of metal, while the socket and straps of the Myers shovel are formed of two pieces of metal. And in this connection I beg to call attention to the construction of the *Ames English spade*, which has also the socket and strap arrangement of the Myers patents, differing from it and from the construction shown in the Cunningham and Smith patents in that the socket is formed by bending a piece of metal so that on one side it is solid while its other side is formed by the meeting of its two lapping edges.

The Ames Baltimore shovel has straps formed not of sheet iron but of malleable castings. These straps are riveted to the blade and secured to the wooden handle in such a way that they meet to form a socket near the blade and continuing above this socket in the form of front and back straps along the handle. (See Hunter, question 7, pages 67–8.)

The Ames California spade is, in all material and substantial respects, precisely the same implement shown and described in the Myers patent. Spades of this character are

proved in the short deposition of Ames, Carr, and Darby to have been made and sold in large quantity between the years 1860 and 1870, their special purpose being for the use of the California miners. The exhibit is shown to have been in stock at the Ames works in Massachusetts for fifteen or twenty years before the date of the examination in 1886.

In *Morton's Cyclopedia of Agriculture*, published in 1875, there are a number of cuts showing the character and construction of various spades, tools, &c., used in ditching, together with a short descriptive passage regarding them. The cuts are shown by a photograph attached to the extract offered in evidence, and those on which the appellees especially rely, are further shown in the drawings following page 82 of the record, which drawings show, in the first place, an exact reproduction of the figure in question, and also additional views made by the expert draughtsman Hunter, and more clearly showing the construction of the shovels as he understands them. (See Hunter's deposition, pages 61 to 64.) I submit that both figures 295 and 288 clearly embody the invention claimed in the Myers patent, and that Mr. Hunter's understanding of them as shown in his drawings is the only possible and reasonable understanding which any one at least accustomed to reading drawings, could arrive at. Indeed, I contend that this is supported by the deposition of Dieterich, record, pages 43, &c., which deposition was taken with the intention of rebutting Mr. Hunter, because the drawings made by Mr. Dieterich, following page 44 of the record, are simply impossible and ridiculous, showing a construction of shovel which no one who had ever seen a shovel could understand to be that shown in the cyclopedia.

In the *Allgemeine Bauzeitung*, published in 1853, two spades are shown in front view having socket straps, which broaden as they approach the back of the spade, and which, as Mr. Hunter understands the drawings, are correctly shown in side view by his sketch following, page 85 of the record; the exhibit itself is found on page 87.

In the *French Encyclopedia*, pages 95 and 96, we have a construction in which a solid socket is first formed, continuing

in front and back straps, which also form a socket for some distance along the handle.

In the Exhibit *Allgemeine Bauzeitung No. 2*, pages 96 and 97, we have a construction precisely like that claimed in the Myers patent, but in which the socket formed by the abutting edges of the straps is connected with the back of the spade by means of a solid metallic extension.

The various exhibits are briefly reviewed in the deposition of Hunter, pages 64, &c.

There is no dispute but that in all cases the uses and publications to which I have referred preceded the Myers invention, and, with the exception of the points on which Mr. Dieterich disagrees with Mr. Hunter, the only questions raised by the appellant heretofore has been as to points in which they contended the exhibits were unlike the drawings of the Myers patent, but which points are nowheres pointed out in the Myers patent as forming any part of the invention.

It is useless to discuss the various points of the case at any length, for the questions must be determined by an examination of the exhibits in connection with the patent; such an examination will demonstrate, I think, that not only the Ames California spade but many of the other exhibits present a complete anticipation to the claim of the Myers patent, and even putting aside the old uses proved and illustrated by spades, &c., offered in evidence, even putting aside those documentary exhibits which most clearly show the identical construction claimed by Myers, there remains in evidence enough to show that Myers did not and could not have made an invention in devising the shovel shown in his patent, as every material and substantial feature of the construction of that shovel had been well known for many years prior to his invention.

Respectfully submitted,

FRANCIS T. CHAMBERS,

Counsel for Appellees.